DOCUMENT RESUME

ED 470 729 SP 041 196

AUTHOR	Hart, James E.; Ritson, Robert J.
TITLE	Liability and Safety in Physical Education and Sport: A Practitioner's Guide to the Legal Aspects of Teaching and Coaching in Elementary and Secondary Schools.
INSTITUTION	American Alliance for Health, Physical Education, Recreation and Dance, Reston, VA. National Association for Sport and Physical Education.
ISBN	ISBN-0-88314-737-8
PUB DATE	2002-00-00
NOTE	274p.
AVAILABLE FROM	AAHPERD Publications, P.O. Box 385, Oxon Hill, MD 20750-0385. Tel: 800-321-0789 (Toll Free); Web site: http://www.aahperd.org/naspe/template.cfm.
PUB TYPE	Books (010) -- Guides - Non-Classroom (055)
EDRS PRICE	EDRS Price MF01/PC11 Plus Postage.
DESCRIPTORS	Athletic Coaches; Case Studies; Court Litigation; Elementary Secondary Education; Hazing; Higher Education; *Legal Responsibility; *Negligence; *Physical Education Teachers; Preservice Teacher Education; Student Teachers; Substitute Teachers; Teacher Responsibility; *Torts; Volunteers
IDENTIFIERS	Legal Precedents

ABSTRACT

This second edition contains updated information and new case studies, offering guidance for safer programs and management of risk while reinforcing sound educational practices. The book features overviews of legal concepts and presents examples of situations from the trenches. Case studies illustrate a variety of teacher, coach, and administrator actions as well as environmental and equipment conditions that have resulted in judicial consideration nationwide. Five sections discuss: "Introduction"; "Tort Law and Negligence Theory" (duty issue, breach of duty issue, causal relation issue, damage issue, and doctrine of respondeat superior); "Negligence Defenses" (governmental immunity, procedural noncompliance with tort claims statutes, contributory negligence, last clear chance, assumption of risk, comparative negligence, and ultra vires act); "Duties of Physical Education and Sport Staff" (instruction and teaching methodology; supervision; equipment, grounds, and facilities; administration of first aid; and transportation); "Agreements to Limit Liability" (permission slips, agreement to participate and waivers, releases, and indemnity agreements); and "Miscellaneous Issues" (hazing; tangent programs and scope of employment; practicum students, student teachers, and volunteers; substitute teachers; and coaching behavior). The appendixes include a glossary, additional cases of interest, and notes. (Contains 60 book, periodical, law-related newsletter, and legal references.) (SM)

Reproductions supplied by EDRS are the best that can be made

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL HAS BEEN GRANTED BY

M. G. Davis

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

1

ED 470 729

LIABILITY AND SAFETY

in Physical Education and Sport

James E. Hart and Robert J. Ritson

SP041196

BEST COPY AVAILABLE

2

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATIC CENTER (ERIC)

☐ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

Liability and Safety in Physical Education and Sport

A practitioner's guide to the legal aspects of teaching and coaching in elementary and secondary schools

James E. Hart
and
Robert J. Ritson

National Association for Sport and Physical Education
An association of the
American Alliance for Health, Physical Education, Recreation and Dance

Copyright © 1993, 2002
National Association for Sport and Physical Education,
an association of the American Alliance for Health,
Physical Education, Recreation and Dance.

All rights reserved.
Reproduction of this work in any form or by any electronic, mechanical, or other means, including photocopying or storage in any information retrieval system is expressly forbidden without the written permission of the publisher. Requests for permission to make copies of any part of the work should be mailed to: NASPE Publications, 1900 Association Drive, Reston, VA 20191-1599.

Address orders to:
AAHPERD Publications, P.O. Box 385, Oxon Hill, MD 20750-0385,
call 1-800-321-0789, or order on line at www.aahperd.org/naspe.
Order Stock No. 304-10252.

Printed in the United States of America.
ISBN 0-88314-737-8

In Memory

of

Robert J. Ritson

A friend, mentor, and consummate advocate on behalf of quality physical education for children and adolescents

Table of Contents

Preface ix

Introduction x

Tort Law and Negligence Theory 1

Duty Issue 2
Breach of Duty Issue 4
Causal Relation Issue 5
Damage Issue 7
Doctrine of Respondeat Superior 8

Negligence Defenses 11

Governmental Immunity 11
Procedural Noncompliance with Tort Claims Statutes 14
Contributory Negligence 14
Last Clear Chance 16
Assumption of Risk 17
Comparative Negligence 19
Ultra Vires Act 19

Supporting Case Law

Duties of Physical Education and Sport Staff 21

Instruction and Teaching Methodology 22
Supervision 54
Equipment, Grounds, and Facilities 116
Administration of First Aid 174
Transportation 191

Agreements to Limit Liability 203

Permission Slips, Agreement to Participate, Waivers, Releases, and Indemnity Agreements 203

Miscellaneous Issues 211

Hazing 211
Tangent Programs and Scope of Employment 219
Practicum Students, Student Teachers, and Volunteers 224
Substitute Teachers 233
Coaching Behavior 236

Appendixes

Glossary of Terms 239

Additional Cases of Interest 245

Notes 253

References 256

About the Authors

James E. Hart, Ed.D and Robert J. Ritson, Ph.D bring together a blend of background experiences that combine to produce practical insight into the day to day issues of liability and safety encountered by physical educators, coaches, and program administrators in the elementary and secondary school settings.

Hart currently teaches physical education and serves as athletic director at Kelly Middle School in Eugene, Oregon. He has 29 years of public school teaching experience, including 11 years as an elementary school physical education specialist and 18 years as a middle school physical educator. He was Oregon's 1996 Middle School Teacher of the Year and was recognized in 1997 and 1998 as Northwest District AAHPERD and National Association for Sport and Physical Education (NASPE) Middle School Teacher of the Year for the Northwest District. He has 30 years coaching experience at the elementary, middle school and high school levels. He has been active in curriculum development at the district and state level and spent two years on special assignment for curriculum development and implementation in the Eugene School District.

Ritson was the Oregon State Department of Education Specialist for Health Services and Occupations at the time of his passing in December of 2000, a position he had held for 4 years. Prior to this he had served 7 years as the Oregon State Department of Education Specialist for Physical Education and 2 years as the State Department Specialist for the Certificate of Advanced Mastery. Ritson began his career with 5 years as a public school physical education specialist, followed by 11 years at the University of Oregon and one year at Boise State University as an associate professor of physical education in the teacher preparation programs. Throughout his career, Ritson maintained a high interest in physical education pedagogy and curriculum and instruction assessment. In his position as the State Department Specialist for Physical Education, he often found himself on the front lines of legal questions and disputes involving school districts and their physical education and sport programs. A dedicated leader in his field, Ritson received numerous honors over his career, including the Society of State Directors of Health, Physical Education and Recreation Presidential Citation for Meritorious Service and Leadership in 1993; Oregon Alliance for Health, Physical Education, Recreation and Dance Honorary Life and Distinguished Service Award in 1994; National Association for Sport and Physical Education (NASPE) Lifetime Distinguished Service Award in 1995; and the Oregon Governor's Council on Physical Fitness and Sport State Fitness Leader Award in 1997.

Both Hart and Ritson have conducted workshops on a variety of topics at the local, state, and national levels. Both have displayed a strong commitment to professional associations in physical education and have served in leadership positions. Hart served terms as treasurer and President of the Oregon Alliance for Health, Physical Education, Recreation and Dance. Ritson, an Honorary Life Member of the Oregon Alliance was serving as treasurer at the time of his passing. He had served terms as chair of the Oregon Governor's Council on Physical Fitness and Sport, president of the Society of State Directors in Health, Physical Education and Recreation, and as president of the Oregon Association for Physical Education. Through their combined experiences, they have had the opportunity to share and interact with professional practioners and administrators in elementary and secondary school physical education nationwide. Their understanding and appreciation for the issues and challenges that face teachers, coaches, and administrators on a daily basis is reflected in their presentation of this volume on liability and sport issues.

Preface

Professionals involved in physical education and coaching must continually strive to provide the safest environment and positive leadership in delivering sport and physical education programs. These professionals are often resources to other educators who are conducting co-curricular activities involving physical activity. The information in this book will offer guidance for safer programs and management of risk while reinforcing sound educational practices.

This second edition of *Liability and Safety in Physical Education and Sport* provides updated information and new case studies. It features concise, readable overviews of legal concepts and presents practical examples of situations from the "trenches". The case studies illustrate a wide variety of teacher, coach, and administrator actions, as well as environmental and equipment conditions that have resulted in judicial consideration across the country. The specific guidance for practitioners focuses on application of the law in practical situations. NASPE has included the material in this book plus additional cases on a CD-ROM to provide an even more comprehensive resource for liability and safety in sport and physical activity programs and settings.

Summaries of the options physical educators and coaches can take to deliver safer programs are given at the end of each section. Labeled "The Reasonably Prudent Physical Educator or Coach...", these lists contain practical advice concerning the issues covered in the case studies.

We believe this material will be of great assistance to K-12 educators, including administrators, physical education teachers, coaches and others with responsibilities in sport or physical activity. It is also an excellent resource for college/university level courses on legal aspects of sport and physical education. It is critical that professionals first maximize safety, and this is a valuable resource for doing so. The authors bring extensive knowledge and experience to these important concerns. All physical educators, coaches, and risk managers will benefit from reviewing their own programs and actions for compliance with the "reasonable and prudent" standards identified in this book.

Judith C. Young, Ph. D.
Executive Director
National Association for Sport and Physical Education

Introduction

Physical education and sport offer a wide variety of opportunities for the total development of school-age children and youth. Along with all other disciplines, physical education and sport help students acquire essential learning skills through common curriculum goals and well-defined performance standards. As students advance through the grades, physical education and sport programs enhance the social, emotional, and intellectual growth common to the goals of other curricular areas while adding a unique emphasis on movement and motor skill development, fitness, outdoor adventure pursuits and lifetime leisure activity, group work, and movement aesthetics.

Physical education and sport programs have been characterized by much change over the last several years. Restricted to the domain of the junior and senior high school curriculum at one time, physical education now serves as an integral part of the elementary school curriculum in many communities across the country. Elementary school physical education programs can and do provide the very foundation on which many quality secondary school programs are built. Federal legislation, such as Title IX and PL 94-142, demanded equal opportunity for males and females as well as disabled students within the school experience. Physical education and sport programs have now embraced the philosophy of inclusion for all. Programs have expanded well beyond the confines of team sport with a proliferation of new and innovative activities. With a philosophy promoting lifetime activity for all, physical education programs now offer a variety of off-campus activities in both lifetime leisure and adventure pursuits. Intramural programs at both the elementary and secondary level have become integral parts of the total program. Athletic opportunities have grown tremendously, particularly in the area of girls' athletics.

The American system of public education is very interrelated with the legal system within which it works. The combination of constitutions, statutes, and case law not only form the primary legal foundation on which schools are based but also influence the day-to-day operation of school programs. Federal and state constitutions, statutory enactments such as PL 94-142 and Title IX, collective bargaining legislation, and the enormous body of judicial decisions or case law have daily impact on not only school systems themselves but on the teachers and students who make up these systems as well. In an attempt to improve education and to hold school districts accountable for student learning, many states have enacted educational reform legislation establishing both program content standards and standards for student performance. The law has established criteria or standards for entering the teaching profession, established the

conditions under which teachers work, and delineated teachers' rights and responsibilities as well as the rights of students and their parents.

Litigation has become a way of life in our society as the public has become quite sophisticated and willing to seek legal redress for perceived wrongs. Physical education and athletic staffs have numerous opportunities to become entangled in legal disputes. Although PL 94-142 and Title IX legislation have directly affected the manner in which programs are conducted and the constitutional rights of students and athletes have come under examination, tort liability for negligence continues to be the major cause for legal action in the physical education and athletic settings. The number of litigations involving injured pupils and athletes is significant. This may be explained, in part, by the expansion of programs and the development of new facilities and equipment, increasing the opportunity for students to participate in many new and varied activities.

Many other factors have contributed to the explosion of litigation in our society. *Sport, Physical Activity, and the Law* identifies some of these factors as insurance shortfalls, the doctrine of entitlement, settlements, and the myth of being risk free.[1] Insurance coverage is simply not adequate in many cases to cover the harm suffered by plaintiffs. In our society, common law all but guarantees the right of any person to sue another at any time and for any reason. Juries tend to look upon injured plaintiffs in humanistic terms. They see those who have been injured through no fault of their own and feel compassion and a sense of entitlement for the injured party to have someone else help shoulder the financial burden that resulted from the injury. The overwhelming number of negligence actions are settled out of court either before or during the course of the trial. In these settlements neither party admits guilt or claims victory; they simply agree to accept a negotiated settlement rather than incurring the cost of a full trial and taking their chances with a jury. We tend to believe in the myth of no risk in our society. However, being risk free is contrary to the inherent nature of physical activity.

An injury problem clearly exists within physical education and sport. The injury problem is a function of both the large number of participants and the nature of the programs themselves. Both programs are characterized by activities in which participants are actively moving and interacting physically as well as socially. They involve activities with varying degrees of risk due to actual or possible physical contact and that may be physically challenging to the student or athlete. The magnitude of the problem is significant. Table1 lists the estimated number of injuries to children requiring medical attention resulting from participation in sport-related activity in 1999. *Principles of Safety in Physical Education and Sport*, a 2002 publication of the National Association for Sport and Physical Education, states that although these injuries are classified as accidents, they are frequently the result of factors that lead predictably to

injuries. They go on to say that these injuries can often be traced directly to social, environmental, or behavioral factors that, if controlled, would result in dramatic reductions in both deaths and injuries.[2]

Although injuries are often viewed as a natural or inherent risk of participation in physical education and sport programs, it is important to not allow the social, environmental, and behavioral factors involved in these injuries to go uncontrolled. It is imperative that physical educators, coaches, and administrators of these programs foresee the risks associated with the activities they offer to students and athletes and that they make every reasonable effort to reduce the risks while conducting their programs.

Table 1
National Estimates for Sports-Related Injuries Requiring Medical Attention in 1999 for Children 5 to 14 Years Old

Activity	Estimated Number of Injuries
Playgrounds	161,074
Archery	800
Ball Sports (not specified)	34,613
Baseball	98,923
Basketball	193,350
Cheerleading	9,472
Dancing	7,770
Exercising without equipment	19,990
Football	172,040
Golf	11,561
Gymnastics	22,564
Hockey	26,378
Lacrosse	1,023
In-Line Skating	58,560
Soccer	80,990
Softball	31,278
Swimming	41,057
Tennis	3,374
Track and Field	36,323
Trampolines	67,936
Volleyball	15,096
Weight Lifting	8,234
Wrestling	18,623
Total	**1,121,029**

Source: Consumer Product Safety Commission (1999): National Injury Information Clearinghouse.

Because of the increased risk associated with activity programs within physical education and sport, physical educators and coaches are exposed to an increased likelihood of becoming involved in a legal incident. It is important that they have a basic working knowledge of the law as it relates to sport and physical education.

The focus of this publication is on tort liability for negligence in the physical education and sport setting. A brief overview of tort liability and negligence theory is presented, followed by a discussion of the various defenses employed by school districts and their employees when engaged in a lawsuit. The bulk of this text is devoted to outlining the duties and responsibilities, or the standard of care, of physical educators, coaches, and other allied professionals. A large number of summaries from actual court cases serve to illustrate the duties and standard of care to which professional physical educators and coaches are held while alerting the reader to the kinds of teacher/coach actions as well as environmental conditions that have given rise to litigation.

Each case summary has a legal reference citation for the National Reporter system, indicating where the case is located, if the reader wishes to refer to the actual report in a law library. The first number in the citation indicates the volume number of the reporter in which the case is located. Next is an abbreviation for the reporter name, followed by the page number on which the case begins. For example, in Larson v. Independent School District, 289 N.W. 2nd 112, the case may be found in Volume 289 of the North Western Reporter, second series, beginning on page 112. The various reporters are listed in the Appendix. Next to the heading "Decision" for each case, the history of the case is outlined. For example, in the above Larson case citation, it reads Decision: Plaintiff/Affirmed. This means the trial court decided for the plaintiff. On appeal, the court of appeals affirmed the trial court decision for the plaintiff. If the court of appeals decision were to be appealed, the decision of the state supreme court would follow.

The case summaries presented were selected because of their practical application to day-to-day school settings, situations, and decisions faced by teachers and coaches. Notes are added to many of the summaries to point out their special significance or call attention to particularly important considerations. Additional cases of interest to physical educators and coaches are listed in the appendix for those who wish to pursue further study in liability issues. Summaries of these additional cases are also available on the CD version of *Liability and Safety in Physical Education and Sport.*

As with any profession, the law has a language of its own. Although every attempt has been made to keep the text in ordinary language, the use of legal terms and phrases was unavoidable. Therefore, a glossary of terms has been included in the appendix for the convenience of the reader.

Notations to the text appear in the appendix section labeled "Notes." Materials used in the preparation of this book are listed in the references section at the end.

James E. Hart
Robert J. Ritson

Tort Law and Negligence Theory

Tort law consists of rules governing civil suits for injuries caused by wrong to others and has a number of regulatory goals.[3] The law of torts serves to compensate, indemnify, prevent, or penalize losses that individuals are subjected to by the activities of others. The most commonly mentioned goals of tort law are compensation for injured persons and deterrence of undesirable behavior.[4] Simply stated, the primary function of the law of torts is to determine when losses should be shifted from one individual to another and when they should be allowed to remain where they have fallen.[5]

Tort law covers three broad areas. They include intentional acts to harm, strict liability, and unintentional acts that result in harm. Intentional acts to harm entail at least an intent on the part of the defendant to engage in conduct that the law regards as wrongful.[6] They include actions that interfere with property; disturbances of intangible interests as is the case in libel and slander, invasion of privacy and misrepresentation, deceit, and fraud; and interference with person as in assault and battery and physical or sexual abuse. Strict liability is liability without fault. According to Betty van der Smissen in *Legal Liability and Risk Management for Public and Private Entities*,

> The focus of strict liability is on the dangerousness of the activity or product, rather than on the conduct or intent of a defendant...The activities which give rise to strict liability are not so unreasonable as to be prohibited altogether, but they are sufficiently dangerous or provide unusual risks so that the law requires them to be conducted at the peril of the one sponsoring the activity.[7]

Unintentional acts resulting in harm include any alleged negligent behavior. Although intentional torts and strict liability occasionally surface in the physical education and athletic settings, tort liability for negligence remains the leading cause of legal action in this area.

Negligence is the failure to act as a reasonably prudent person would act in the same or similar circumstances. Negligence theory has been established on the principle that those who are harmed by the carelessness of others should be compensated by the wrongdoers.

Negligence depends on the existence of five essential elements. The plaintiff has the burden of proving all of the following elements in order to establish an actionable claim for negligence:

- The defendant owed the plaintiff a duty of care, for instance, not to engage in unreasonably risky conduct;
- The defendant breached that duty by his/her unreasonably risky conduct;

- The defendant's conduct in fact caused harm to the plaintiff;
- The defendant's conduct was not only a cause-in-fact of the plaintiff's harm but also a proximate cause, meaning that the defendant's conduct is perceived to have a significant relationship to the harm suffered by the plaintiff;
- The existence and amount of damages, based on actual harm, of a legally recognized kind such as physical injury to person or property.[8]

The absence of any one of these essential elements of negligence will bar recovery of damages under the law.

Duty Issue

The basic premise of negligence law is that we generally owe our fellow citizens a duty to exercise reasonable care in the conduct of our own affairs.[9] In any action seeking to recover damages as a result of negligence, the plaintiff must show that the defendant, as a matter of law, owed a duty of care to the plaintiff. Duty requires an individual to conform to a standard of conduct for the protection of others against unreasonable risks and rests upon the existence of some relationship between the parties. This rule of duty arises out of both common law and statute. As discussed by van der Smissen, this duty can originate from a relationship that is inherent in the situation or one that is voluntarily assumed, or it can be a duty expressly prescribed by statute.[10] There is no question a duty exists on the part of physical educators, coaches, administrators, and school districts to exercise reasonable care to protect students and athletes from harm.

Foreseeability is a central element in the question of duty. A duty of reasonable care in protecting others from harm is required whenever a foreseeable risk of harm exists. Courts will not assign liability where the defendant could not have reasonably foreseen the danger or risk in a given action or situation.

The standard of care required by duty is one of reasonable and ordinary care under the circumstances. The duty owed by all people generally—the standard of care—is the duty to exercise the care that would be exercised by a reasonable and prudent person under the same or similar circumstances to avoid or minimize risks of harm to others.[11] The "reasonable person" is a construct of the court and not the average person. The reasonable person is "a model of propriety and common sense, a person of sound judgment who acts at all times with ordinary prudence, or some other blend of reason and common sense."[12] A reasonable person will act in light of knowledge shared by the community generally and also in light of information and knowledge that he or she has that is not generally known and that reasonable people would not ordinarily have (superior or specialized skill or knowledge).[13] What

constitutes reasonable and ordinary care is unique to each specific case and varies with the facts and circumstances of a situation as they are, or should be, known to a defendant. Ordinary care in one case might very well be deemed negligence under different circumstances or surroundings. The duty of reasonable care is a constant, but circumstances may increase or decrease the amount of care required in order to meet the reasonable and prudent standard. The degree of care demanded of a person in any given situation is the resultant of three factors: the likelihood that his or her conduct will injure others, taken with the seriousness of the injury if it happens, and balanced against the interest he or she must sacrifice to avoid the risk.[14]

The extent and nature of the duty owed can vary depending on the status of the individuals involved. Anyone who comes onto the school's property assumes the status of trespasser, licensee, or invitee. A trespasser is a person who enters without consent of the school or district. A licensee is an individual who enters for his/her own purposes but with the express or implied consent of the school or district. An invitee is a person who enters at the express or implied invitation of the school or district to pursue the purpose for which it is held open. The highest standard of care is owed to the invitee, with the least being afforded to the trespasser.

There is generally no duty owed to trespassers. They are normally held to be responsible for their own safety although there are some limitations on this absence of duty. Generally, no duty exists except to refrain from willful, wanton, or reckless disregard for the safety of the trespasser. The law does treat some child trespassers differently. Under the attractive nuisance doctrine, child trespassers are afforded ordinary care against foreseeable risks. A short discussion relative to the attractive nuisance doctrine is included later in the section on equipment, grounds, and facilities.

The duty owed to a licensee consists of warning them of dangerous natural and artificial conditions on the premises of which the school or district has actual knowledge. There is no duty to inspect the premises for such conditions. A duty of reasonable care in avoiding the causing of an injury to the licensee is required of all school personnel while conducting their activities.

The invitee, on the other hand, is present at the express or implied invitation of the school or district, and the district has the duty to inspect and discover dangerous conditions and activities on the premises. Depending on the danger involved, the school or district must either warn the invitee or make the condition or activity safe. Students, parents, playground users, and outside groups using the school facilities through community school programs are classified as invitees.

Courts generally refuse to impose liability for doing nothing. The fact that an individual realizes or should realize that action on his or her part is necessary for another's aid or protection does not of itself impose a duty

to take such action. Those who do act, who choose to engage in activities that create risk of injury to others, do have a duty to exercise care in avoiding injuring others.[15] Creating or unleashing a risk acts to produce a duty. Duty, therefore, normally arises only under affirmative conduct, the exception being where a "special" relationship exists. Duty is extended under special relationships, holding a person liable not only for their acts but their omissions as well. Teachers and coaches are part of a special relationship with students and as a result, the extent of their duty is increased. Because of the student-teacher relationship, the law not only compels teachers and coaches to use reasonable care in conducting their activities, but also in a number of cases imposes a duty to perform certain tasks. Having special training as educators and coaches also serves to extend the duty or standard of care required beyond that of a reasonable and prudent person. As noted by Morris, if an individual has chosen to engage in an activity requiring special skills, education, training, or experience, then the standard by which his/her conduct is measured is that of the reasonably skilled, competent, and experienced person who is a qualified member of the group authorized to engage in that activity.[16]

The responsibilities of physical educators and athletic staff under their duty of care are set forth by both common law and statute. They include adequate and proper instruction; supervision; inspection of facilities, grounds, and equipment; rendering of first aid; and safe transportation. Specific responsibilities under each of these broad categories are numerous and are detailed later in the section on "Duties of Physical Education and Sport Staff and Supporting Case Law."

Breach of Duty Issue

Breach of duty constitutes unreasonable conduct and may be the outcome of either malfeasance, misfeasance, or nonfeasance. Malfeasance is the performance of an improper or illegal act, misfeasance is the improper performance of a legal act, and nonfeasance is the failure to act where obligated to do so. Whereas anyone can be guilty of malfeasance and misfeasance, nonfeasance requires the existence of a special relationship between the parties, such as in the case of teacher and student. Most negligence actions are based on affirmative conduct judged to be unreasonable or misfeasance. In all cases, negligence requires the breach of a legal duty, not merely a moral or humane duty.

The "standard of care" is the measure by which the actions of individuals are gauged in court actions for negligence. Courts have held that an individual is required to exercise the degree of care and foresight that a reasonably prudent person would exercise under the same or similar circumstances. A synthesis of common law allows the conclusion that the degree of care required is ordinary and reasonable care. There is no fixed standard in the law by which a court is enabled to arbitrarily say in every

case what conduct shall be considered reasonable and prudent, and what shall constitute ordinary care, under any and all circumstances.[17]

The rule of ordinary care prevails at all times, but what constitutes ordinary care can vary depending on the circumstances. Factors such as the age and capacity of the participants, the type of activity, and the environmental conditions are considered when deciding what constitutes ordinary care under the circumstances. The question of whether one has breached his or her duty of reasonable care to another is a question for the jury.

There are two major components to a breach of duty analysis: (1) foreseeable risk of harm and (2) unreasonable conduct in light of the foreseeable risks.[18] In evaluating the breach of duty issue, courts will first ask whether, given a particular set of circumstances, the reasonably prudent person should have been able to recognize and foresee an unreasonable risk or likelihood of harm to others. Once again, because of the special training, skills, and experience of teachers and coaches, their actions will be measured against the standard of a reasonably skilled, competent, and experienced teacher or coach who is qualified and authorized to conduct physical education and sport programs.

The courts, in deciding what a reasonably prudent person would have done in a given set of circumstances, apply a balancing test often referred to as the Hand formula. The Hand formula calls for a balancing of the likelihood of harm and the potential seriousness of the harm against the burden of taking adequate precautions to prevent the harm.[19] Simply stated, if the risk and seriousness of harm outweighs the inconvenience of taking precautions to avoid injury, the reasonable person would take the precautions. On the other hand, if the risk or seriousness of harm is slight compared to the relatively high burden or inconvenience of the precautions, the reasonable person would proceed without the precautions. Standards employed in the teaching and coaching field that are endorsed by professional organizations and supported by current professional literature will be used as one measure in determining whether an individual teacher's or coach's actions satisfy the reasonable and prudent standard.

Causal Relation Issue

To prevail in a negligence action, a plaintiff must bear the burden of showing that the defendant's negligent conduct was both a cause-in-fact and proximate or legal cause of his or her harm. Causal relation is a neutral issue, unaffected by the right or wrong of an individual's conduct. Although philosophical, scientific, and moral evaluations of a defendant's conduct are relevant in examining the issues of duty, breach of duty, and damage, they are irrelevant to the issue of causal relation. The court makes no attempt to ascertain all the causes or *the* cause, and it makes no

attempt to determine why the defendant acted the way he or she did. When dealing with causal relation, the only issue of interest is the defendant's contribution to the plaintiff's injury.

The first issue regarding causation is the issue of cause-in-fact. The question is simply whether or not the defendant's negligent conduct caused the plaintiff's harm or not. In *The Law of Torts*, Dan Dobbs explains,

> In the great mass of cases, courts apply a "but for" test to determine whether the defendant's conduct was a cause-in-fact of the plaintiff's harm. Under the "but for" test, the defendant's conduct is a cause-in-fact of the plaintiff's harm if, but for the defendant's conduct, that harm would not have occurred. The "but for" test also implies a negative. If the plaintiff would have suffered the same harm had the defendant not acted negligently, the defendant's conduct is not a cause-in-fact of the harm. The "but for" test requires the plaintiff to persuade the court that different, nonnegligent conduct by the plaintiff would have avoided harm to the plaintiff.[20]

The "but for" test cannot be used, however, where two or more concurring causes or tortfeasors operate to bring about an injury and where any one of the causes or tortfeasors operating alone would have brought about the identical result. In cases such as these, the "substantial factor" test is used. This test holds that the defendant's conduct is a cause of the injury if it was a material element and a substantial factor in bringing it about. In both cases, determination of cause-in-fact is a question for the jury. In the application of both tests, the jury applies the "more probable than not" standard of proof.

In addition to showing that a defendant's conduct was a cause-in-fact of his or her harm, a plaintiff must show that the conduct was the proximate cause of the harm as well. As the authors of *Understanding Torts* explain,

> Proximate or legal cause modifies and adds to the requirement that the defendant's culpable conduct be the actual cause of the plaintiff's injury. Even when the plaintiff establishes actual cause, courts will preclude recovery when the causal relationship between the defendant's conduct and the plaintiff's injury is too attenuated, remote, or freakish to justify imposing responsibility on the defendant.[21]

The main thrust of proximate cause is to limit a defendant's liability to the foreseeable kinds of harms risked by his or her conduct. Whereas the type of harm must be foreseeable, the extent and exact manner in which the harm occurs need not be foreseeable. However, even where the harm was foreseeable, a defendant is relieved of liability if there is a superseding intervening force or cause. An intervening force or cause is an

independent event that intervenes between the original wrongful act and harm, turning aside the natural sequence of events and producing a result that would not otherwise have followed and that could not have been reasonably foreseen. In other words, if there is an intervening cause that produces an unforeseeable injury, the person guilty of the original wrongful act will not be held liable.

Courts must also sometimes entertain a question regarding causal relation where some time lapse exists between an alleged negligent act and an ultimate injury. In situations such as these, the court must determine at which point the law will no longer hold a defendant liable for an injury that he/she has in fact caused. In making this determination, the court applies the "probable or foreseeable consequence rule." There is no question of cause-in-fact. In applying the test, the court asks whether the injury suffered by the plaintiff was the foreseeable consequence of the original risk created by the negligent act or omission of the defendant. An example of the application of this rule is offered by van der Smissen, who reported that a city pool was held liable for an injury resulting from broken glass in a dressing room. The pool allowed a bottle vending machine in the dressing room. The court held that the breaking of bottles was a natural and probable consequence and that injury to barefoot patrons was a foreseeable consequence of the original act of putting the machine in the dressing room.[22]

Damage Issue

As previously mentioned, tort law is directed toward the compensation of individuals for losses they have suffered with respect to any of their legally recognized interests in person or property. The final component of the five-part test for negligence requires the plaintiff to show that he/she has actually suffered some harm, loss, or injury in order to recover financial compensation from the defendant. It is not enough to show a mere threat of injury, nor is it sufficient to show that the defendant has engaged in unreasonable or reckless conduct. Actual injury or loss to one's person or property must be shown, or the action fails.

If the plaintiff is able to show that the defendant did, in fact, owe a duty and that this duty was breached, thereby legally causing injury or harm to him/her, then the plaintiff should be compensated for any losses suffered. Damages, in the legal sense, refer to the monetary compensation meant to cover the losses suffered by the plaintiff in negligence actions. Awarded damages may be of several kinds, including compensatory, general, special, and punitive.

Compensatory damages are sometimes referred to as actual damages and are designed to compensate the injured party for his or her actual loss. They typically cover out-of-pocket expenses such as medical bills and loss of wages. General damages are a form of compensatory damages

meant to reimburse the injured party for damages that naturally follow the type of conduct carried on by the wrongdoer. Compensation for pain and suffering are typical of general damages. Special damages are those peculiar to the individual plaintiff, including medical expenses and loss of earnings, actual as well as potential.

Punitive damages are intended to punish and deter others from the same type of conduct. Punitive damages are noncompensatory and, as such, fall outside the original philosophical intent of negligence law. Punitive damages normally are not awarded in cases of ordinary negligence but are reserved for cases of intentional torts or gross negligence where the defendant has been shown to have acted with malice, ill will, or conscious and reckless disregard for the person and property of others.

There are numerous formulas, rules, and guidelines for determining the amount of damages awarded to a given plaintiff. Whereas a judge may guide and control the jury's award, the jury, in the absence of outrageously large or small awards, has fairly wide latitude in their judgments.

The Doctrine of Respondeat Superior: Who is Liable?

It is not uncommon for a plaintiff to name everyone who is even remotely connected to his or her injury as defendants in suit. The basis for this action is the concept of respondeat superior, or "let the master answer." The doctrine of respondeat superior holds that the negligence of the employee is imputed to the corporate entity if the employee was acting within the scope of responsibility and authority, and if the act was not a willful and wanton attempt to injure another.[23] The doctrine holds an agency accountable for the actions of its employees while also holding the individual employee personally accountable.

Although virtually all jurisdictions impose liability on employers for the torts of their employees, the rationales for the respondeat superior doctrine have varied. Joseph Glannon, in *The Law of Torts*, explains,

> It is sometimes said that the employer should pay because he/she can select and control employees and thereby prevent injuries due to negligence. More skeptical observers have suggested that respondeat superior liability is simply a device to provide a "deep pocket" defendant able to pay the plaintiff's damages. Another rationale increasingly cited for the doctrine is that employers are in a position to spread the costs of accidents by purchasing liability insurance and raising the price of their products to reflect the inherent cost of the enterprise. Perhaps the most basic rationale for the doctrine is that the employee acts for the master in the performance of the master's work.[24]

Whatever the rationale, the doctrine of respondeat superior applies unless limited by statute or common law that either negates or limits the duty owed to the plaintiff. Governmental immunity and limited liability statutes can, in some circumstances, act to eliminate the accountability of the agency for the actions of its employees. Readers are encouraged to check the statutes of their own individual states for further clarification.

Although the school district, as a corporate entity, is held accountable for the actions of its employees, it is not uncommon for a plaintiff to attempt to hold department heads, athletic directors, principals, superintendents, and school boards individually liable for the negligent actions of teachers and coaches. In order to hold an administrator or supervisor accountable for the negligent acts of subordinates, the plaintiff must show that the administrator or supervisor either directed or cooperated in some way with the commission of the negligent act. In reality, this amounts to holding administrators liable for their own negligence rather than for that of their subordinates. As reported by van der Smissen,

> Acts for which an administrator or supervisor are responsible, and for which negligent performance makes one liable because it enhances the likelihood of injury encompasses a wide range of functions. There are five categories of functions:
>
> 1. Employing competent personnel and discharging employees shown to be unfit;
> 2. Providing proper supervision and having a plan of supervision;
> 3. Directing certain services as to the manner in which they are done;
> 4. Establishing rules and regulations for safety and complying with policy and statutory requirements; and
> 5. Remedying dangerous conditions and defective equipment or giving notice of same when there is knowledge of the condition.[25]

Department heads, athletic directors, and principals clearly have some responsibility in both the employment and supervision of teaching and coaching staff. In the event of student injury and charges of negligence against teaching and/or coaching staff, the supervisor or administrator overseeing that staff member may likely be charged with individual accountability as well. When a staff member is charged with negligence, questions about the hiring criteria, the development and communication of building and district policies and procedures, the plan of supervision for building programs and staff, and the supervision of building and equipment maintenance are likely to be asked of all individuals in the organizational chain of command. Neglect in any of these

responsibilities, if shown to be a substantial factor in contributing to student injury, can result in a finding of negligence against the supervisor or administrator.

Teachers can find themselves in the role of a supervisor as well when using practicum students, student teachers, teacher aides, and volunteers. It is imperative that teachers in these situations recognize that respondeat superior applies and that they can be held accountable for the actions of those who are subordinate to them. The supervisory responsibility of teachers in these situations needs to be taken seriously and planned for. (This is discussed later in the section on practicum students and student teachers.)

The doctrine of respondeat superior only applies to those actions that occur within the scope of employment. It is important to note that when individuals' actions fall outside the scope of their employment, they are left to stand alone and must bear the full responsibility for any liability. (A discussion of scope of employment is included in the section on tangent programs and scope of employment.)

Negligence Defenses

A defendant to a negligence suit may employ any one of a number of possible defenses, depending on the statutes in place in his or her state. The clearest and most absolute affirmative defense against negligence claims is to prove that one or more of the five essential elements of negligence are lacking. A plaintiff's action fails if it can be shown a duty was not owed to the plaintiff; there was no breach of duty where one existed; the act in question was not the cause-in-fact or proximate/legal cause of the injury; or, there was not, in fact, any actual injury or harm.

Aside from the above affirmative defense, a defendant may employ a number of other defenses that, in differing circumstances and jurisdictions, may be effectively used to counter claims of negligence and thereby avoid, or limit, liability. These possible defenses include governmental immunity, procedural noncompliance with tort statutes, contributory negligence, assumption of risk, comparative negligence, last clear chance, and ultra vires act.

The availability of the above defenses varies from jurisdiction to jurisdiction. Readers must investigate the status of governmental immunity and all statutes related to tort legislation in their own states in order to determine the defenses currently available to them. Readers should consult either their school district attorney or their personal attorney for the particulars of the law as it applies in their state.

Governmental Immunity

Sovereign and governmental immunity, whether conferred by constitution, statute, or common law, bars actions against the government, its political subdivisions, and, in some instances, its officers. Sovereign immunity refers to the immunity of the state itself, whereas governmental immunity applies to the legislatively created subdivisions of the state such as municipalities and school districts. Immunity, although not a defense against negligence in the true sense of the word, does provide protection against liability.

Sovereign immunity is an old English common law concept that evolved from the notion that the king could do no wrong. The modern-day concept, as applied in American common law, is said by some to have had its origin in eighteenth-century England in the case of Russell v. The Men of Devon, 100 Eng. Rep. 359 (1788). In this case, the entire male population of the unincorporated county of Devon was sued in order to recover damages sustained by a wagon due to the ill repair of a bridge that the county allegedly had a duty to maintain. The court denied recovery on two counts. First, it claimed, there was no law, legislative intent, or

precedent for an action of this nature; second, there was no fund out of which the plaintiff could be compensated. The doctrine of immunity arising out of the Russell case was generally accepted by early American courts and was extended so as to cover not only the state but its political subdivisions such as municipalities and school districts as well.

Out of the principles laid down in Russell v. The Men of Devon, sovereign and governmental immunity continued to evolve in the United States. The rationale often put forth by early federal courts included the notion that there could no legal right to file suit against the authority that makes the law upon which the right depends. It was also argued that it was a denial of federal sovereignty to be sued in its own courts without its consent.[26] Individual states adopted the federal rule of immunity. Many states gave the common law notion of governmental immunity stronger underpinning by including the doctrine of immunity within state statutes and constitutions.

The rationale for the continued existence of sovereign and governmental immunity includes expediency, protection of public funds, maintenance of the state's supremacy, and the orderly administration of government. Criticism of the doctrine continues in some jurisdictions. Opponents of the doctrine argue that it is inherently unfair, that it creates governmental irresponsibility, and that it constitutes an unnecessary exception to the general policy of states whose constitutions guarantee individuals the right to due process.[27] Despite the general criticisms of the doctrine, the U.S. Supreme Court has upheld its constitutionality.

The United States government waived its sovereign immunity for tort claims under many circumstances through the Federal Tort Claims Act of 1946. The legislative and judicial trend among the states has been away from immunity, as witnessed by the number of states that have either abrogated the doctrine totally or in part. Approximately 30 states have abolished tort immunity generally but a number of others have worked in reverse, retaining immunity generally but abolishing it under certain circumstances.[28] A review of state statutes and case law indicates that the overwhelming majority of states have either judicially or statutorily abolished or limited both sovereign and governmental immunity through enactment of Tort Claims Acts and by the authorization to procure liability insurance.

Where not abrogated, sovereign and governmental immunity has typically been limited by tort claims acts in one of five ways. First, legislation has generally placed a statutory limit on the financial liability for any given occurrence of tort. Anywhere from $100,000 to $500,000 has been legislated as a cap by those states that have statutorily limited their liability. In some states, immunity has been waived up to the limits of insurance coverage. Second, some states have limited their liability by distinguishing between their governmental and proprietary functions. In these states, governmental functions are held immune to suit whereas

proprietary functions are not. Governmental functions are those that are directly related to the organization's purpose for existing and are often imposed or mandated to the organization by law. Proprietary functions are not directly related to the purpose of the organization. In the K-12 school setting, both physical education and interscholastic athletic programs are held to be governmental functions.

The immunity of governmental agencies has also been limited through the distinction between the discretionary and ministerial duties and acts of their employees and officers. Discretionary duties or acts are those carried out within the scope of employment and in which the individual is required to use personal deliberation, decision, and judgment. Ministerial duties or acts are those that the individual is required to perform and in which he/she has no personal discretion. Discretionary refers to functions that are primarily policy making or planning in nature whereas ministerial functions are primarily operational in scope. Discretionary acts are generally protected with immunity in these jurisdictions whereas ministerial acts are not.

Virtually all states have enacted recreational user statutes. According to Dobbs,

> The gist of these statutes is to immunize landowners or occupiers from liability for most non-willful harms to persons who are permitted to use the land for recreational purposes without a fee or charge. The stated purpose of the statutes is to encourage landowners to open private lands for recreational use in an increasingly crowded society with inadequate public recreation space. The statutes commonly provide that no duty of care is owed to make the premises safe for the non-paying recreational users.[29]

Even though recreational user statutes, in most cases, were intended to apply to private land, not publicly owned land, some courts have extended the recreational user statutes to provide immunity for accidents that occur on public school playgrounds and in gyms during nonschool hours. A few state courts have also extended the concept to recreational activities within physical education classes.

Finally, most jurisdictions still embracing immunity have provided for statutory exceptions to exclude willful and wanton conduct, the maintenance of dangerous facilities and grounds, and the provision of dangerous or defective equipment from immunity protection.

It is important to note that in those jurisdictions that continue to embrace the common law doctrine of governmental immunity, that immunity does not extend to employees who can be sued individually for their own torts. A number of these jurisdictions have statutorily limited the liability of employees, however. Some states have statutorily granted them limited official immunity, holding employees immune for their

discretionary acts but not for their ministerial acts. Some statutes hold the employee liable for gross negligence and willful and wanton conduct while holding them immune for ordinary negligence. Other states have enacted hold-harmless statutes requiring districts to defend and pay any judgments rendered against employees. Where hold-harmless or indemnification statutes have been enacted, gross negligence or willful and wanton conduct will serve to negate or invalidate their protection. In the case of both statutory official immunity and hold-harmless legislation, only those acts performed within the scope of employment are covered. Any act outside the scope of employment will leave the individual personally liable.

Procedural Noncompliance with Tort Claims Statutes

As previously mentioned, state-level tort claims acts have been enacted in a majority of the states to either abrogate or limit the doctrine of governmental immunity. These statutes define the scope of liability for school districts and their employees as well as statutorily set financial caps or limits on liability. They also prescribe some procedural requirements for plaintiffs bringing suits. Failure to comply with the procedural requirements of these statutes can serve as a bar to recovery.

State tort claims acts generally outline the requirements for the filing of a notice of claim and prescribe the statute of limitations for initiating a claim. Nearly two-thirds of the states require that a notice of a claim, generally a written notice, be served within a specified number of days from the time of injury. The number of days specified varies from jurisdiction to jurisdiction, ranging anywhere from 90 days to three years. The primary reason for the notice requirement is to allow a timely investigation of the claims while the facts are fresh and witnesses are available, and to allow for a negotiated settlement without litigation. Although not all states require a notice of claim to be submitted, all states do have statutes of limitation that restrict the length of time in which a suit may actually be filed. Tort claims usually have a two- or three-year statute of limitations, with two years being the most common.

Most tort claim acts have built in an exception to both the notice of claim and statute of limitation requirements for minors or for those who are incapacitated either physically or mentally. The built-in exceptions serve to lengthen the time frame involved.

Contributory Negligence

Section 463 of the Restatement of Torts defines contributory negligence as "conduct on the part of the plaintiff which falls below the standard to

which he/she should conform for his/her own protection, and which is a legally contributing cause cooperating with the negligence of the defendant in bringing about the plaintiff's harm."[30] Contributory negligence is a harsh concept in that any showing of negligence on the part of the plaintiff, even slight, will bar the plaintiff from any recovery of damages. "The defense does not rest upon the idea that the defendant is relieved of any duty toward the plaintiff. Rather, although the defendant has violated his/her duty, has been negligent, and would otherwise be liable, the plaintiff is denied recovery because his/her own conduct disentitles him/her to maintain the action."[31]

In a few circumstances, the plaintiff who is guilty of contributory negligence is not barred from recovering damages. These circumstances include cases where the defendant is guilty of willful, wanton, and reckless conduct and in cases of intentional torts.

The burden of proof for contributory negligence rests with the defendant and, in most states, must be proven by a preponderance of the evidence. In determining the reasonableness of a plaintiff's actions, the same standard of care used for defendants is applied. The plaintiff must act as a reasonable and prudent person. In *Torts in a Nutshell,* Edward J. Kionka states,

> However, the results of applying this standard are not necessarily the same for plaintiffs as they are for defendants. Reasonable care for one's own safety is not always the same as reasonable care for the safety of others. Generally speaking, courts and juries tend to be more lenient with plaintiffs, so the same conduct which would have made a defendant negligent may be found to be reasonable (or less culpable) as to a plaintiff. Courts more often find that questions of contributory negligence are for the jury. As to causation, the same "substantial factor" test applies as in the case of the defendant's negligence.[32]

Contributory negligence on the part of children is much more difficult to establish than in the case of adults. Drawing from a review of case law, van der Smissen summarizes that "some states use a guideline of below seven years of age not capable of contributory negligence, over 14 years of age capable of contributory negligence, and between ages (8-13) dependent upon the circumstances and the individual."[33] The reasonable and prudent person standard applied to adults is modified in determining the contributory negligence on the part of children. The child plaintiff is required to act as a reasonably prudent person of like age, capacity, and experience would act in the same or similar circumstances and to take reasonable precautions to guard his or her own safety. Basically, the same five elements necessary for negligence apply to contributory negligence.

As a harsh concept, contributory negligence has come to be viewed unfavorably by both courts and state legislatures. Dobb notes,

> The traditional contributory negligence rule was extreme in not only results but in principle. No satisfactory reasoning has ever explained the rule. It departed seriously from ideals of accountability and deterrence because it completely relieved the defendant from liability even if he/she was by far the most negligent actor.[34]

Only four states (Alabama, Maryland, North Carolina, and Virginia) and the District of Columbia continue to apply the common law doctrine holding contributory negligence as a complete bar to recovery.[35]

Last Clear Chance

Jurisdictions adhering to the common law doctrine of contributory negligence recognize three exceptions to the rule completely barring recovery. These exceptions allow a contributorily negligent plaintiff full recovery. The exceptions include recovery against a defendant who was guilty of willful, wanton, or reckless harm; a defendant whose duty, under statute, was to protect the plaintiff from his or her own risky conduct; and a defendant who had the last clear chance to avoid injury. The authors of *Prosser, Wade and Swartz's Torts: Cases and Materials* state, "The last clear chance doctrine has been called a "transitional doctrine"; a way station on the road to some other remedy such as comparative negligence."[36]

The last clear chance doctrine allows a plaintiff who is guilty of contributory negligence to recover damages if it is shown that the defendant had the last clear opportunity to avoid the harm or injury. The reasoning behind the last clear chance doctrine is a source of much discussion and debate. It has been argued that if a defendant had the last clear chance to avoid the harm, then the plaintiff's negligence could not be the proximate or legal cause of the resulting injury. Other courts have reasoned that whoever had the last clear chance to avoid the injury possessed the higher degree of fault and should carry the burden of liability—a hint of comparative negligence principles.

A plaintiff can be found in one of two basic predicaments, helpless peril and inattentive peril. Helpless peril refers to situations where the plaintiff's contributory negligence has placed the plaintiff in a predicament from which he or she cannot remove him/herself. Inattentive peril pertains to those situations where the plaintiff's contributory negligence has placed the plaintiff in a predicament from which he or she could remove him/herself through the use of ordinary or reasonable care, but where he or she negligently remains right up to the time of injury.

Under the doctrine of last clear chance, the defendant has slightly different obligations and liability in the above two situations. In both cases, where the defendant discovers the plaintiff in either helpless or inattentive peril and has the opportunity to avoid the accident but fails to

do so, the plaintiff is not barred from recovering damages. Where the defendant fails to discover the plaintiff in peril, however, the law makes a distinction between the two predicaments. In the case of the plaintiff in helpless peril, the court will ask whether the defendant could or would have discovered the helpless peril through the use of reasonable care. In this situation, the court treats "should have discovered" as "did discover." Where the defendant fails to discover inattentive peril, very few courts have permitted the plaintiff to recover any damages. The courts reason that the negligence of both plaintiff and defendant made them ignorant of each other in this situation, and, therefore, neither of them had the last clear chance to avoid harm. The plaintiff is thereby barred from recovering damages under the doctrine of contributory negligence.[37]

Assumption of Risk

The assumption of risk concept assumes that a plaintiff recognizes the danger in a given situation and voluntarily assumes the risk, thereby relieving the defendant of any duty to protect the plaintiff. It requires both the actual knowledge and understanding of the risk and the voluntary assumption of it. If either of these factors is missing, the defense fails. Knowledge and understanding of the risks are generally limited to the normal hazards associated with a given activity, as a plaintiff would not be expected to adequately comprehend risks beyond those. A spectator at a baseball game, for example, can be said to assume the risk of being hit by a foul ball but certainly does not assume the risk of bleachers collapsing.

Individuals may assume risks either expressly or through implication. Express assumption occurs when parties enter into agreements limiting their liability to one another. These agreements can take a couple of forms. Individuals can enter into written agreements whereby they agree to assume the known and inherent risks involved in a given activity. They can also execute waiver or release agreements whereby they assume not only the inherent risks of the activity but also the risk of ordinary negligence by the other party to the agreement. The law requires the risks being waived to be both clear and understood.

There are situations where the law will not allow such express assumption of risk. Courts generally hold waiver and release agreements in the K-12 school setting to be invalid. Waiver and release agreements represent contracts. Because minors cannot legally enter into contracts, they are not in any position to sign away their rights. Although these agreements are often signed by parents or guardians, the law has long recognized that parents may not sign away the legal rights of their minor children. In the case of students who reach legal age while in school, the courts still limit the validity of such agreements. A six-part test used by courts in determining the validity of waiver and release agreements is outlined later in Wagenblast v. Odessa School District, 758 P.2d 968

(1988) in the section on agreements to limit liability. The implications of waivers and releases related to implied assumption and contributory negligence are also discussed at that point.

Implied assumption occurs in those situations where the plaintiff becomes aware of and understands and appreciates the given risks yet voluntarily proceeds to confront those risks. In doing so, he/she is said to have decided to take his/her chances and liability of any defendant is waived. The conduct of the plaintiff is viewed as an agreement to assume the risk. Implied assumption of risk is not an appropriate defense in the physical education setting where participation is generally not voluntary. It is, however, commonly employed in cases involving interscholastic athletics. Again, any assumed risk must be inherent to the activity, known and comprehended by the participant, and voluntarily assumed.

Most tort actions where assumption of risk is an issue involve cases of implied assumption. The issue of assumption of risk is one for the jury, and juries have proven to be somewhat sensitive to the plight of the injured plaintiff and do not assign assumption of risk lightly. It is never upheld as a defense in cases involving young children or those incapable of comprehending the risks involved in a given activity. In situations dealing with students, their age, experience, and mental capacity will play an important role in their ability to comprehend and appreciate any risk they assume.

Assumption of risk, like contributory negligence, is a harsh doctrine. In those jurisdictions still adhering to the concept, any finding of assumption of risk will act as a total bar to recovery. After the adoption of the concept of comparative negligence, courts found it logically or morally difficult to maintain a dual system in which the plaintiff's fault only reduced damages if it was called contributory negligence but it barred the plaintiff completely if it was called assumed risk. Consequently, most comparative negligence states, by statutory provision or judicial decision, simply merge assumed risk into comparative negligence.[38] If a modern trend can be discerned, it is to allow implied assumption of risk to be absorbed into comparative negligence. This consequently allows the jury to treat implied assumption of risk as a partial defense. U*nderstanding Torts* states,

> A true consensus regarding the fate of implied assumption of risk has yet to definitely emerge. Different jurisdictions have adopted one of three distinct approaches to the defense: (a) maintaining assumption of risk as a complete bar; (b) questioning the reasonableness of the assumption; and (c) absorbing assumption of risk into comparative negligence.[39]

Comparative Negligence

Due to general dissatisfaction with the harshness which contributory negligence exerted on injured plaintiffs, the majority of states have enacted comparative fault statutes. The intent of comparative negligence, or comparative fault, as it is often referred to, is to apportion the damages between the negligent plaintiff and the negligent defendant. Under comparative fault, the damages are reduced for a plaintiff who is charged with contributory fault. The plaintiff's conduct may still be called contributory negligence, but the legal effect of that contributory negligence is different. The principles discussed under contributory negligence, last clear chance, and assumption of risk are still employed by the courts in determining the degree of fault to be assigned to an injured plaintiff who contributed in some manner to his/her own injury. Comparative fault statutes are generally viewed as an attempt to more fairly dispense justice in tort actions.

Comparative negligence or fault statutes vary in their approach from state to state. Approximately a dozen states have adopted a pure comparative negligence approach in which the plaintiff's recovery of damages is reduced by the percentage of fault attributable to him or her. Under this approach, if a defendant were found to be 10% at fault and the plaintiff 90% at fault, the plaintiff would collect 10% of the assigned damages. Another dozen states have adopted a modified form of comparative negligence in which the plaintiff's recovery is reduced by the percent of fault attributable to him/her as long as the plaintiff's fault is not as great as the defendant's. Under this modified approach, if the fault of the plaintiff is equal to or greater than that of the defendant, the plaintiff is completely barred from recovery of damages. Approximately 20 jurisdictions have adopted another modified form in which the plaintiff's recovery is reduced by the percentage of fault attributable to him/her as long as the plaintiff's fault is not greater than the fault of the defendant. If the plaintiff's fault is greater than that of the defendant, recovery is barred under this approach. South Dakota uses a "slight–gross" approach to comparative fault. This approach allows recovery by the plaintiff only if his or her fault is slight compared with the negligence of the defendant.[40]

Ultra Vires Act

The defense of ultra vires act is used to negate the doctrine of respondeat superior. Whereas the doctrine of respondeat superior serves to hold a school district liable for the negligent acts of its employees, school districts will argue that they should not be held responsible for those actions of employees that fall outside the scope of their responsibility or authority (ultra vires act).

Most states that have enacted tort claims legislation have specifically limited their liability to those damages arising out of actions that fall within the scope of employment. Hold-harmless or indemnification statutes likewise exclude ultra vires acts from protection, and district insurance coverage is always written to cover only those actions falling within the scope of employment. Whenever injury occurs as a result of employee actions deemed to be outside the scope of employment, the employee will be left to stand alone in suit and must rely on his or her own resources and insurance for protection.

Duties of Physical Education and Sport Staff

Common law and statute prescribe the duties owed to students by physical education and sport staff. Common law duty represents the degree of care the community requires to be exercised for the protection of others. The standard of care required of physical educators, coaches, and administrators of activity programs, in order to avoid liability, is that of a reasonably prudent person under the same or similar circumstances. When applying the reasonably prudent person standard to the actions of a teacher, coach, or program administrator, courts will compare their actions to that of a reasonably prudent person who is qualified to teach, coach, or administer activity programs, not the average person.

Statutory law, together with common law, requires that physical education and sport staff provide adequate and proper instruction; supervision; inspection of equipment, grounds, and facilities; transportation; and the rendering of first aid when necessary. Specific duties and responsibilities under each of these areas are numerous, and an abundance of case law has helped delineate them.

Vast numbers of court actions involving school districts and their employees are threatened each year. Due to the large number of participants and the unique opportunities for physical and social interaction, physical education and sport are particularly vulnerable to injuries and court action. From the large numbers of threatened actions, a small percentage of claims go to trial, as a good number are settled out of court. From the cases that go to trial, an even smaller percentage end up in appellate or supreme courts for review. Although records of original trial courts are kept, the only access to these records is by case name at the courthouse. No indexing or reporting system for trial court actions exists. Therefore, the legal researcher, when examining case law, is limited for the most part to appellate or supreme court decisions as reported in the National, Regional, and State Reporter systems. Trial court decisions that are appealed are done so on the basis of a point of law rather than on issues of fact. Most of the reported discussion, therefore, centers on these points of law rather than on the facts and circumstances of the alleged negligent behavior or act.

Although it is recognized that individual state approaches to negligence and tort claims legislation differ from jurisdiction to jurisdiction, a review of case law from across the country will give physical education and sport staff a practical and useful glimpse at the type of teacher/coach actions and facility conditions that have been challenged in court. Matching the fact situations and holdings in these

cases to the legal concepts already discussed, and to the law as it exists in the state of the reader, should provide practical insight into the standard of care for physical educators, coaches, and program administrators as well as into what might occur in the reader's state.

Instruction and Teaching Methodology

Claims of negligent instruction can cover a broad range of complaints, including improper instruction, teaching methodology, and selection of activities as well as claims of insufficient instructions. Aside from claims of improper supervision, physical education and sport staff are most commonly challenged in court over claims of negligent instruction. The authors of *Sport, Physical Activity and the Law* explain, "Courts generally recognize and accept the concept that, with few exceptions, no activity is inherently unsafe in and of itself. The question then, is whether or not the participant was physically, mentally, and emotionally ready for the demands of the activity."[41]

Innovations and expansion of programs, combined with higher expectations of parents, have increased the demand for accountability of and expertise by physical education and sport staff. Physical education and sport staff must thoroughly understand all activities that they undertake to teach or coach and must continue to refine their skill and knowledge through in-service opportunities, conferences, clinics, and workshops. It is especially critical that staff upgrade skill and knowledge in areas of weakness before undertaking the delivery of those areas of the curriculum or activity program to students.

When instructing a student or athlete to carry out a task, physical educators and coaches must be sure that their instructions are proper under the given set of circumstances. Instructions must conform to recognized standards employed within the professional field and with recommended practices for specific activities. When giving instruction in any area of the physical education curriculum or sport program, teachers and coaches will be held to the standard of a reasonably prudent person qualified to teach or coach that area. The courts will look at more than certification when determining one's qualifications. Physical education and sport staff can expect to be challenged whenever their instructions deviate from the recognized standards for the questioned activity or from district, state, or activity association guidelines.

It is important that a teacher's/coach's instructions not only be proper but also sufficient in detail to allow for safe and successful participation by the student or athlete. In reviewing the sufficiency of instruction,

courts examine the skill instructions, including instructor and/or student demonstrations, as well as safety instructions. While striving to cut down on talk and maximize physical movement and participation in physical education and sport, physical educators and coaches are cautioned not to shortchange the adequacy or completeness of their instructions. Adequate instruction also requires feedback and remediation following the practicing of skills in which the student or athlete has received instruction.

Coercing students to perform can be a very dangerous practice for both physical educators and coaches. Physical education and sport staff would be prudent not to second-guess student fears about performing a skill or to coerce them to execute skills after minimal instruction. Students and athletes must be physically, mentally, and emotionally up to the task. Expressions of fear, insecurity, and reluctance on the part of participants would indicate they are not equal to the task being asked of them. Under some circumstances, coercion has been viewed by the courts as constituting willful and wanton misconduct.

A good number of the skills taught in physical education and sport are sequential in nature. Considerable attention needs to be given to the selection of activities and the logical and safe sequencing of skills to allow for both safe and successful participation. This is especially important in those developmental activities with elevated risk, such as gymnastics. Planning for proper sequencing should not be left to chance. Physical educators and coaches would be prudent to prepare not only written daily lesson or practice plans, but unit plans as well. These documents should be kept on file because courts have sometimes requested that instructors produce them in order for the court to examine the methodology and sequencing employed in the class or activity. Although daily written lesson plans are extremely important, the often-neglected unit plan offers the best opportunity to satisfactorily plan for both the successful and safe learning by students and athletes.

Physical education and sport staff should thoroughly acquaint themselves with district as well as state scope and sequence documents, curriculum materials, activity and sport guidelines, and safety materials. When the adequacy and propriety of a teacher's/coach's instruction are challenged, these documents and the teacher's/coach's awareness of and compliance with them often become factors examined by the courts.

The cases that follow offer practical illustrations of the several instructional issues discussed above that have been examined by the courts.

Scott v. Rapides Parish School Board
732 So. 2d 749

Issue: Lack of instructions for long jump tryout

Level of Court: Court of Appeals
Date/State: 1999/Louisiana
Decision: Plaintiff/Affirmed

The plaintiff, an 18-year-old senior, was injured in his physical education class during a maximum-effort long jump trial. The plaintiff had never gone out for track before but showed an interest after his final basketball season. The new coach had observed the plaintiff jumping in the long jump pit over a several-day period in physical education and encouraged him to come out for track. On the day of the accident, there were several other students jumping, including other members of the school track team. After observing a jump of 21 feet by the plaintiff, the coach asked him to do another jump and to not worry about faulting but to just jump. The coach admitted that he had not given any instructions to the plaintiff regarding approach, takeoff, body control in the air, or landing. When the plaintiff attempted his final jump, he landed incorrectly and suffered a serious knee injury. The injury required surgical repair and follow-up physical therapy as well as the use of a knee brace. The injury also left the plaintiff with a condition known as drop foot, where the peroneal nerve fails to work, leaving the plaintiff unable to lift the ankle or toes up.

The plaintiff filed suit against the school board, claiming that he had not been properly instructed, prepared, and supervised on how to safely perform the long jump and that this failure on the part of the school district was the cause of his injuries. The trial court awarded over $200,000 in damages to the plaintiff, and the school district appealed.

The court of appeals affirmed the lower court ruling. The court found that the long jump was a skill activity containing some inherent risks for injury. However, the court ruled that the coach had the duty to exercise reasonable care and supervision of the plaintiff by providing him with adequate and proper instruction "regarding the performance necessary to successfully and safely complete the long jump under maximum-effort conditions". The court took note of testimony indicating no instruction was ever given to the plaintiff on proper approach, takeoff, controlling the body in the air, or landing. The court held that the duty owed to the plaintiff was breached and that this breach constituted the legal cause and cause-in-fact of the plaintiff's injury.

Larson v. Independent School District No. 314
289 N.W. 2d 112

Issue: Improper instruction and methodology—
Lack of unit plan and progressions in gymnastics

Level of Court: State Supreme Court
Date/State: 1979/Minnesota
Decision: Plaintiff/Affirmed

An eighth-grade student was injured while performing a headspring over a rolled mat in a required physical education class. As a result of landing on his head, and from the force of running and diving onto the mat, the plaintiff broke his neck, resulting in quadriplegic paralysis. The plaintiff brought action against the teacher, principal, and superintendent, claiming negligence in instruction and supervision.

Testimony showed that the teacher involved was a first-year teacher who had only been on the job for nine class periods before the accident occurred. He had replaced the previous teacher at midyear when the previous teacher had to report for military duty. The plaintiff alleged negligence in instruction and supervision based on the argument that the teacher taught a difficult gymnastic skill without first teaching appropriate lead-up skills or progressions, designed in part for safety, and that the teacher was improperly spotting at the time of the accident. Negligence claims against both the principal and superintendent were based on their alleged failure to properly develop, administer, and supervise the physical education program. Testimony showed that the principal did not actively participate in developing or supervising the physical education curriculum and that these duties were totally delegated to the first-year teacher. The principal's only involvement was to hand the new teacher a copy of the curriculum guide. He merely asked that the two teachers meet and plan physical education classes for the remainder of the year. The two teachers met for 30 minutes and discussed which units had been taught and which had not. When reporting for duty, the teacher told the principal what subjects he was going to teach. No detailed discussion of activities or teaching methods occurred.

Expert testimony indicated that unit planning in physical education was of critical importance in ensuring that proper progressions for safety were followed and that such planning should be in addition to daily lesson plans. Neither the new, nor the previous teacher, had been required to develop or submit any such detailed written plans.

The court found for the plaintiff, declaring the teacher 90% negligent, the principal 10% negligent, and the student free from negligence. A directed verdict was issued on behalf of the superintendent on the grounds that a prima facie case of negligence on his part had not been established. The plaintiff was awarded $1,013,630 and his father $142,937. In

upholding the trial court decision for the plaintiff, the state supreme court ruled as follows:

1. The evidence supported a finding of negligence in the instruction and supervision of the physical education class by the first-year teacher.
2. The record indicated that the principal failed to exercise reasonable care in supervising the development, planning, and supervision of the physical education program and in supervising a first-year teacher.
3. Neither the principal, in his abdication of responsibility for developing and administering the program, nor the teacher, in deciding how to teach and spot an advanced gymnastic skill, were involved in decision making entitled to protection under the doctrine of discretionary immunity.
4. Where found personally liable, the defendants were not entitled to indemnity under governmental immunity.
5. In purchasing insurance, the district waived its absolute claim to governmental immunity up to the limits of its coverage.

Due to the purchase of liability insurance, the court held the school vicariously liable for the torts of its employees and ordered it to pay $50,000 to each plaintiff.

Passantino v. Board of Education of the City of New York
395 N.Y.S. 2d 628

Issue: Inadequate instruction—
Collision between base runner and catcher

Level of Court:	Court of Appeals
Date/State:	1977/New York
Decision:	Plaintiff/Remanded re: damages/Reversed and dismissed

The plaintiff suffered injuries resulting in quadriplegia as a result of colliding with the catcher as he was running home. Trial evidence established that the plaintiff was a junior with four years of experience in the game of baseball and was well versed in the fundamentals of the game. On the day of the accident, while the plaintiff was on third base, the coach called for a squeeze play, requiring the plaintiff to begin stealing home as soon as the pitcher had committed himself and requiring

the batter to bunt the ball. The batter, instead of bunting, took a full swing and missed. The plaintiff had traveled one-third of the way home and was moving at full speed as the catcher, in possession of the ball, took several steps toward third and waited for the tag out. The plaintiff chose not to return to third and, as he came within about five feet of the catcher, he lowered his head, rammed the catcher at full speed and thereby suffered his injuries. The plaintiff alleged that the defendants were negligent in the following:

1. Carelessly training and supervising him, as well as the activity;
2. Failing to provide adequate and competent coaching; and
3. Failing to properly instruct in the fundamentals of baseball.

The jury found for the plaintiff and awarded $1,800,000 in damages. The Supreme Court, Appellate Division, upheld the lower court decision for the plaintiff but found the award of damages to be excessive and ordered a new trial relative to damages unless the plaintiff agreed to reduce the damages to $1,000,000. Judge Cohalan dissented from the majority and voted to reverse the lower court decision. In his opinion, the evidence indicated that the plaintiff had assumed the risk of injury and was contributorily negligent in that he failed to either return to third or slide home and chose to use his head as a battering ram instead.

After reviewing the record, particularly the dissenting opinion of Judge Cohalon, the Court of Appeals reversed the decision of the lower courts and dismissed the complaint. The court ruled that the defendant's motion at the end of the trial for a dismissal should have been granted as the evidence failed to establish a prima facie case of negligence on the part of the defendants.

NOTE: Since this case was decided, the duty to warn has been increasingly argued before courts relative to sport injuries. A Seattle case involving the failure to warn about the use of a football helmet in "spearing" brought this issue into clear focus and resulted in a $6.3 million judgment against the Seattle School District. The issue of the failure to warn has somewhat lessened the force of the assumption of risk defense as was used in this case. To assume a risk, the risk must be known and appreciated by the injured party. As sliding in baseball can involve substantial contact, much like that when warding off a tackler in football, warnings about the use of the head as a battering ram or point of contact should be given. These warnings should sufficiently inform athletes of the specific risks and consequences of any failure to adhere to that warning.

Sanders v. Kuna Joint School District
876 P. 2d 154

Issue: Inadequate instruction and supervision—
Sliding in softball during physical education class
while deviating from the normal activity of the class

Level of Court: Court of Appeals
Date/State: 1994/Idaho
Decision: Defendant/Affirmed

The plaintiff was enrolled in a weight lifting class at his high school. On the day of the accident, the teacher decided to have the class play softball instead. The plaintiff came to class wearing a pair of running shoes. No instructions were given to the students, and the teacher supervised the game from behind the backstop. During the course of the game, the plaintiff slid into first base to avoid being tagged out. As a result of his attempted slide, the plaintiff broke his ankle.

The plaintiff charged the district with negligence in requiring the students to play softball, in failing to adequately supervise the students, including the inspection of their shoes, and in failing to properly instruct the students on how to play softball. The school district moved for a summary judgment while claiming the plaintiff's evidence did not support a claim of negligence. The trial court granted the district's request for summary judgment.

The court of appeals upheld the trial court rendering of summary judgment for the district. The court discussed at length the plaintiff's failure to support claims of negligent instruction and supervision with evidence. The court took note that the plaintiff simply made claims of negligent instruction and supervision but failed to offer how instruction or closer supervision could have prevented the injury.

NOTE: This case raises several important issues for physical educators. Teachers would be prudent to follow their prepared lesson plan rather than just winging it as was done in this case. When winging it, overlooking critical points of instruction and warnings as well as the establishment of rules for play can become an issue.

In this case, it is clear that students were allowed to slide with no instruction or previous practice on the skill of sliding. Sliding is an advanced skill requiring carefully delivered instruction and supervision. Generally, sliding is viewed as an inappropriate practice in physical education classes and should be reserved for those participating in the interscholastic athletic program. Even within the context of the athletic program, sliding requires not only carefully planned instruction but also close supervision during the learning process. Where sliding is allowed, instruction needs to be given to the infielders on fielding and tagging

techniques as well. Because of the risk that sliding presents, it is important that warnings be given as a part of the instructions.

Proper supervision requires, among other things, that physical educators establish rules for play, enforce the established rules for play, keep students from engaging in unsafe practices, keep activities within the ability level of the students, and make sure the students are properly attired for the activity.

In this case, an issue was made of the fact that the shoes worn by the plaintiff were improper for the activity. Whereas that issue may be open to debate, it is clear that the defendant in this case abandoned the planned activity for an unplanned one and in doing so failed to adequately instruct or supervise the students in his care. Had the plaintiff supported his charges with evidence, the outcome of this decision may have been quite different.

Becket v. Clinton Prairie School Corp.

504 N.E. 2d 552

Issue: Collision of two baseball players—
Failure to warn and inadequate supervision

Level of Court:	State Supreme Court
Date/State:	1987/Indiana
Decision:	Defendant/Reversed and remanded/Reversed

The plaintiff, a senior on the baseball team, suffered a broken jaw as a result of a collision with another player during practice. Evidence indicated that the plaintiff, an outfielder, was injured during a drill conducted by the assistant coach. The coach acted as the hitter in this drill. Thirty yards in front of the coach was the cutoff man and 30 yards behind him was a line of outfielders. The coach would hit a fly ball to the outfielder at the end of the line who would then throw the ball to the cutoff man. The cutoff man would throw it to a shagger who stood off to the side of the coach.

After the coach hit the ball to the plaintiff, the plaintiff called for the ball. The coach called for the cutoff man to catch the ball. The wind was blowing hard and it was difficult for the players to hear the instructions. The cutoff man testified he was only to catch the ball upon instructions from the coach to do so. The cutoff man did not hear the plaintiff call for the ball, and the plaintiff did not hear the coach call for the cutoff man to catch it. The two players collided head-on, and the plaintiff received his injuries. The plaintiff alleged that the coach did the following:

1. Failed to warn of the danger of the collision;
2. Failed to adequately supervise the practice;
3. Failed to post sufficient personnel to watch for possible collisions;

4. Conducted practice in an unreasonably dangerous manner; and
5. Allowed supervisory personnel to participate directly in the practice.

The trial court granted summary judgment for the defendant, holding that the district did not breach its duty to the plaintiff. The Court of Appeals held that the district and the coaching staff owed the plaintiff a duty of care and that a dispute of material facts relative to a breach of this duty existed and, therefore, the case was a proper one for jury consideration and not summary judgment. It reversed the trial court decision and remanded the case for further proceedings.

On appeal to the state supreme court, the defendants argued that the standard of care applied by the court of appeals was inappropriate. They argued that they should only be liable for willful and wanton behavior. Indiana law has held that school districts have a duty to exercise ordinary and reasonable care for the safety of children it oversees. The district argued that a less demanding standard of care should be required of school personnel supervising older children. The district further argued that the plaintiff assumed all ordinary inherent risks of playing baseball and that it should, therefore, be excused from the duty to use ordinary and reasonable care.

The supreme court ruled that, as a matter of law, the district had the duty to use reasonable care and supervision. The question of whether the defendant exercised the duty with the level of care of an ordinary prudent person under the same or similar circumstances was a factual determination for the jury.

The court held, however, that trial court evidence clearly showed that the plaintiff had actual knowledge of the risk of collisions in baseball and had voluntarily incurred the risk as a participant. The supreme court ruled, therefore, that the defense of incurred risk was valid and the summary judgment of the trial court, based on incurred risk, proper.

NOTE: A distinction between interscholastic athletics and physical education needs to be emphasized here. Key to the assumption of risk defense is the voluntary assumption of a known and appreciated risk. Whereas this defense can be successfully employed in the interscholastic sport setting in those jurisdictions allowing this defense, it is usually inapplicable in the elementary or secondary school physical education program. This is due to the fact that participation in the physical education class, and specific activities within the class, are seldom voluntary.

Hammond v. Board of Education of Carroll County
639 A. 2d 223

Issue: Failure to warn of risks associated with tackle football—Female member of varsity team

Level of Court:	Court of Appeals
Date/State:	1992/Maryland
Decision:	Defendant/Affirmed

The plaintiff, a 16-year-old female, turned out for her high school varsity football team. This was the first time in this area that a girl had done so, and the story gained a lot of local attention and some media coverage. Together with her parents, the plaintiff completed all requirements for participation in football. She had the required physical for sports participation, and her parents signed the permission and consent to participate forms. The participation and consent forms stated that, although everything was done to prevent injuries, injuries do and will occur. After the first practice session, a parent meeting was held. As part of the presentation, coaches repeated instructions and warnings given to the players earlier that indicated serious neck and head injuries could occur if the head were used in blocking or tackling. In an interview with local media, the plaintiff acknowledged that the game of football was a rough sport.

Trial evidence indicated that the plaintiff had taken part in the summer preseason weight-training program and had made good progress on her strength development. She fully participated in all practices leading up to the first scrimmage of the season. During the first practice scrimmage against another school, the plaintiff was carrying the ball when she was tackled by an opposing player. As a result of the tackle, the plaintiff suffered multiple internal injuries, including a ruptured spleen. Her spleen and part of her pancreas were removed, and she was hospitalized for some time.

The plaintiff and her parents charged that the district and coaches were negligent in not warning of the risk and dangers involved in playing football. The plaintiff testified that she had watched a considerable amount of football but had never seen anyone seriously injured. She testified she knew she could get hurt but was thinking in terms of a broken arm or broken leg.

The trial court summary judgment for the defendant was upheld by the Court of Appeals. The court held that risks of personal injury while playing competitive tackle football are both known and obvious, and therefore no duty to warn of this possibility exists.

In its opinion, the court wisely stated that even though they found no legal obligation on the part of this school district to do so, warning participants of the potential for serious injury would be sound public

policy. They concluded that in view of the very serious injuries received by the plaintiff, school officials might want to consider issuing a warning of the possibility of such injuries, even though there is no legal obligation to do so.

NOTE: Those involved in or charged with overseeing high risk and/or competitive contact sports would be wise to communicate verbally and in writing the specific risks involved in the given activity. The more you inform participants and their parents, the better off you will be in the event of a mishap. Although it is hard to imagine that someone would not recognize the risk of serious injury in a tackle football program, it is important to remember that young people see themselves as invincible and often do not appreciate the risks. Like the plaintiff in this case, they often view getting hurt as a sprain, bruise, or broken bone. Let them know what seriously hurt really means.

Coaches and teachers should take note that the coaches in this case did warn about the risks involved in using the head as a point of contact in blocking or tackling. Specific warnings of risks involved in the incorrect performance of skills taught should always be given to athletes and students. This is a critical element in carrying out the duty of instruction. Failure to warn of the risks involved in using the head as a battering ram while tackling resulted in a $6.3 million judgment against the Seattle School District.

Landers v. School District No. 203, O'Fallon
383 N.E. 2d 645

Issue: Improper instruction—Coercion to perform gymnastic skill

Level of Court:	State Appellate Court
Date/State:	1978/Illinois
Decision:	Plaintiff/Affirmed

The plaintiff, a 15-year-old high school student, was injured in her physical education class while attempting to do a backward roll. Testimony indicated that at the time of the accident, one week after the tumbling unit began, the plaintiff was 5'6" tall and weighed approximately 180 pounds. She was in a class with approximately 40 other girls.

The instructor had students observe another student prior to practicing the backward roll. Prior to the accident, the plaintiff received no personal instruction or attention from the teacher with respect to the

backward roll. The plaintiff testified that the day prior to the accident, she went to the instructor's office and told the teacher she was afraid to do the backward roll and that she did not know how to perform it. She claimed to have told the teacher that as a small child she completed the move a half dozen times, but not properly, and that the activity always gave her a headache and bothered her neck. She informed the instructor she was afraid to perform the skill because she was big and heavy. The teacher offered to help the plaintiff after school but was unable to do so because the plaintiff was a bus student. The following day, after asking the plaintiff if she could do the backward roll and being told no, the teacher told her to practice it and have another student help her. In doing so, the plaintiff suffered a subluxation of her vertebrae. She eventually had to have a cervical fusion, grafting bone from her hip onto four vertebrae in the neck.

Illinois law confers the status of in loco parentis on teachers, which results in teachers being subjected to no greater liability for their acts than are parents. Therefore, under Illinois law, teachers are only liable for their acts or omissions deemed to constitute willful or wanton misconduct. They are not liable for mere negligence.

The trial court held the teacher's conduct to constitute willful and wanton misconduct. In so holding, the court stated that the teacher was aware that the plaintiff was obese, untrained in the skill being demanded, and fearful of performing it due to her size and because she had experienced physical problems in the past from attempting to perform the skill. The court ruled that, given these circumstances, the teacher's demand that she perform the skill anyway, without any personal instruction or testing of her strength, showed an utter indifference to the plaintiff's safety. The appellate court upheld the trial court judgment of $77,000 for the plaintiff.

NOTE: Second-guessing student fears about performing certain tasks can be very risky business. As a teacher or coach, it would be prudent to back up in the progression of skills taught to be sure that the students are physically prepared for and capable of performing the required task. Along these same lines, teachers and coaches should not second-guess any student complaints about illness or injury. Although some students clearly manufacture illness and injury excuses to get out of performing certain tasks, in the event of an injury, the teacher or coach would appear foolish in court trying to explain why he/she chose to ignore a student complaint and required the student to perform. Coercion is a poor and risky strategy in both of the situations above.

Koch v. Billings School District No. 2
833 P. 2d 181

Issue: Coercion to perform—Junior high school student instructed to squat press 360 lbs. using free weights

Level of Court: State Supreme Court
Date/State: 1992/Montana
Decision: Defendant/Reversed and remanded with instructions

A 15-year-old junior high student was injured as a result of attempting to squat-press 360 pounds during his physical education class as instructed by his teacher. The plaintiff testified he protested the teacher's instruction but was again told to try the lift. While trying to stand from a squatting position with the 360 pounds on his shoulders, the plaintiff could not sustain the weight and fell. The weight pinned the plaintiff for several seconds until the teacher could remove it. In addition to a lumbar sprain, the plaintiff suffered disc injury and spinal nerve compression.

The trial court granted partial summary judgment for the board of directors and the teacher on the grounds of governmental immunity. The school district, the final defendant, later moved for summary judgment. The plaintiff opposed the district's motion for summary judgment and moved for reconsideration of the previous partial summary judgment. The plaintiff's motion was denied, and summary judgment was entered for the school district.

Subsequent to the entered judgment, the supreme court modified the state immunity statute, especially as it pertained to the purchase of liability insurance, while deciding a number of other cases. The plaintiff appealed to the supreme court for relief from the summary judgment. During the time awaiting a decision relative to the appeal, the legislature also modified the state immunity statue. The modified statute only granted immunity to legislative bodies of governmental entities and only to legislative actions taken by those bodies. The revised statute was made retroactive to cases without a final determination by May 24, 1991.

The supreme court ruled that because of the amended immunity statute, reversal of the trial court summary judgment was proper. The case was remanded to the district court for trial on the merits with instructions to take notice of the amended version of the immunity statute.

NOTE: Several instructional and supervisory issues will likely arise during the trial on the merits in this case. Coercion to perform in the face of reluctance on the part of the participant will be an issue. The court would also most likely be asked to look at the student's ability and whether or not the instructions were proper in light of his ability. Whenever injury occurs in the use of free weights, the use of spotters or

a catch bar will be examined. Safety instructions and warnings will be examined as well as teaching methodology.

Passafaro v. Board of Education of the City of New York
353 N.Y.S. 2d 178

Issue: Improper instructions—Going barefoot in gym

Level of Court:	State Supreme Court, Appellate Division
Date/State:	1974/New York
Decision:	Plaintiff/Reversed and granted new trial

The plaintiff was awarded $50,000 for injuries he sustained after slipping on the gym floor, while participating in gymnastics, during his physical education class. Testimony was conflicting regarding the instructions given to the plaintiff. The plaintiff alleged that the physical education teacher told him to participate in his stocking feet because he forgot his tennis shoes. The defendant denied giving such an instruction and testified that the plaintiff was directed to stay at the side of the gym and observe the class. The evidence established, and the defendant agrees, that participating in stocking feet is a bad practice. A substantial question of fact regarding the given instructions was presented to the jury.

The charge given to the jury instructed that recovery could be predicated on the improper instruction to exercise in stocking feet or in the failure to provide adequate or sufficient supervision for the students in the class. The jury found in favor of the plaintiff, and the defendant appealed.

On appeal, the defendant claimed that the suit brought by the plaintiff was based on giving improper instructions and that the court's charge to the jury regarding supervision was, therefore, improper. The supreme court agreed with the defendant and ruled that, although the plaintiff injected evidence of inadequate supervision while charging the teacher with giving improper instructions, the evidence submitted at the trial cannot support a conclusion of insufficient supervision and the judgment must be reversed. Even if the evidence of inadequate supervision was sufficient, the court noted that the plaintiff, by his own admission, attributed the accident to his required participation in stockings.

The court held that improper supervision could not have been the proximate cause of the injury regardless of whose testimony the jury accepted, because the student slipped before reaching the mat where the activity was being conducted and where student leaders and spotters were present. The court also noted that the plaintiff was instructed, according to the defendant, to not participate in the first place. Finally, the court ruled that the school board was not an "insurer of student safety and was not required to provide such continuous supervision that it could control the movements of all students, at all times." The lower court judgment against the defendant was reversed and a new trial granted.

Brod v. Central School District No. 1
386 N.Y.S. 2d 125

Issue: Improper instructions—Going barefoot in the gym

Level of Court:	State Supreme Court, Appellate Division
Date/State:	1976/New York
Decision:	Plaintiff/Amended re: damages

The plaintiff, a nine-year-old student, was instructed by his physical education teacher to go barefoot if he wanted to participate in class, as a result of forgetting his gym shoes. While chasing a ball in class, the plaintiff's feet stuck to the floor, causing him to lose his balance and fall. As a result of the fall, he lost two front teeth. The jury returned a verdict for the plaintiff, awarding him $15,000 and $3,800 to his father.

On appeal, the supreme court affirmed the lower court finding of negligence, stating the evidence supported a finding of negligent instruction and that the negligent instruction was the proximate cause of the plaintiff's injuries. The supreme court ruled that the trial court was in error in instructing the jury that lawyer's fees are customarily paid from jury verdicts and ordered a new trial limited to the issue of damages.

NOTE: Going barefoot during physical education class is not an acceptable practice (neither is the dangerous alternative of participating in stocking feet). When students come to class without the appropriate attire that would allow for their safe participation in the class activity, they should either have their activity for the day modified or be excluded from participation.

Ehlinger v. Board of Education of New Hartford Central School
465 N.Y.S. 2d 378

Issue: Improper instruction—Failure to follow recommendations for fitness test administration

Level of Court:	State Supreme Court, Appellate Division
Date/State:	1983/New York
Decision:	Defendant/Remand for new trial

The plaintiff brought action on behalf of her 14-year-old daughter who dislocated her right elbow when she struck the wall while running the speed test portion of the New York state physical fitness test in her physical education class. The plaintiff alleged that the defendant was negligent in failing to follow the recommendations in the test manual for designing the course and failing to provide adequate instructions and supervision for those taking the test. Testimony showed that the manual

recommended a minimum of 14 feet clearance beyond both the start and finish lines and that the defendant, in setting up the course, only provided eight feet of clearance. The only instructions given were for the students to run around the cones three times and for their partners to record their times. The clearance beyond the start and finish lines was reduced due to the class being held in the "girls'" gym, which was smaller than standard size.

The court ruled there was a duty owed to the plaintiff by the defendant to act as a reasonably prudent person under comparable circumstances. The court held that a jury could certainly find it foreseeable that injury would result from running the course as designed. The court ruled that, in light of the defendant's failure to follow the recommendations in the manual or warn students of possible safety hazards due to course modification, the jury could conclude that this duty was breached. The court reversed the dismissal judgment of the lower court and ordered a new trial.

Green v. Orleans Parish School Board
365 So. 2d 834

Issue: Adequacy of instruction—Lead-up to wrestling match

Level of Court:	State Court of Appeals
Date/State:	1978/Louisiana
Decision:	Defendant/Affirmed

The plaintiff, who had gone out for football, failed to pass the vision test required by the board and was not allowed to engage in contact activities. He did participate in exercises and noncontact drills. The plaintiff was transferred into the sixth-period physical education in accordance with the coach's policy of having the football players take physical education together.

After two weeks of spring training, the sixth-period physical education class began a six-week unit in wrestling and weight lifting. The first three classes in wrestling consisted of warm-ups and instruction in basic positions and moves. Each move was demonstrated and then practiced "by the numbers," where each move was broken down into number components, and on command, executed methodically step by step through the entire maneuver. This procedure was repeated several times with each move, and the speed of the execution was gradually increased. On the fourth day, the students were directed to wrestle hard for 30 seconds, using the basic moves they had been taught. Each 30-second match was officiated by a varsity wrestler.

While attempting to roll out of a bridge, the plaintiff injured his neck and was left paralyzed. The plaintiff filed suit against the district, claiming inadequate instruction and supervision. The court of appeals upheld the trial court finding of no negligence on the part of the

defendants. The trial court noted that the duty of instructing, preparing, and supervising students in dangerous activities was to use due care to minimize the risk of harm. The court ruled the conditioning was adequate and that the students had been properly prepared through instruction in the basic moves to take part in the 30-second drill. The court found the class to be organized and supervised.

The court of appeals noted that the plaintiff's lengthy expert testimony was very impressive; however, the defendant's presentation of expert testimony was just as impressive. The appellate court stated that the trial court had not "erred manifestly in finding the evidence did not preponderate in favor of the conclusion that the teacher's instruction, preparation for, and supervision of the drill in which the plaintiff was injured fell below any locally or nationally accepted standard of reasonable care for teachers under similar circumstances."

NOTE: This case is an example of a teacher doing a lot of things right. The class had undergone two weeks of conditioning before the wrestling unit began, had undergone a warm-up, and had received instructions, including demonstration, of the skills to be learned. The skills were broken down into small components and practiced for three days before being applied in a short match. This sequencing demonstrated an awareness of and appreciation for student safety. In any activity, particularly a contact activity or one of elevated risk, instruction should include safety instructions and a warning about risks inherent in the activity, especially those risks associated with the improper performance of required tasks.

Roventini v. Pasadena Independent School District
981 F.Supp. 1013

Issue: Football player dies from heat exhaustion—
Deprivation of constitutional due process rights

Level of Court:	U.S. District Court
Date/State:	1997/Texas
Decision:	Plaintiff

Parents of a 16-year-old football player sued the school district, the board of directors, the superintendent of schools, the principal, the athletic trainer, and 13 football coaches following the death of their son from heat exhaustion during the first day of football practice. The parents alleged that the practice session combined two practices into one and consisted of more than four hours of intense activity on a day that was hot and humid. They alleged that the coaches made no attempt to acclimatize their son or the other players to the excessive heat and extensive exercise, did not provide sufficient opportunities for rest during the practice, and

failed to provide enough water to prevent dehydration.

The plaintiffs charged that near the end of practice, their son and the other players were required to perform "gasser" conditioning drills that consisted of running two 100-yard sprints within 45 seconds of one another. The parents contended that their son complained to the coaches at the beginning of the drills about his discomfort and showed signs of dehydration, heat exhaustion, and heat stroke but was required to finish the drills anyway. In the middle of the drills, the plaintiff's son collapsed. The parents alleged that their son received no medical assistance after his collapse and that the coaches continued to supervise the drills rather than tend to their son and even held a team meeting after the completion of the drills. The trainer was not on the field at the time of the incident as required by policy.

The parents filed their suit in federal district court, alleging that the actions of the defendants violated Section 1983 of the U.S. Code and the Due Process Clause of the U.S. Constitution as well as the Texas Tort Claims Act. The defendants filed for a summary judgment to dismiss the suit for failing to properly state a cause of action. The defendants claimed that their actions failed to violate any recognized constitutional rights of the plaintiff's son. The court held that the Due Process clause of the constitution protected students from deprivation of bodily integrity and deprivation of life caused by callous indifference of school officials and that due process clearly protected students from being "run to death" by their coaches. The court ruled that governmental entities may be held liable for violations of federal law committed pursuant to a governmental policy or custom. The court held that the death of the plaintiff's son was not the result of either a school district policy or custom. Therefore, the court dismissed the case against the school district, the board of directors, the superintendent, and the principal. The court ruled that in their individual capacities, the coaches and athletic trainer could be held liable and that the plaintiff had adequately pleaded allegations against them. The court ordered the coaches and athletic trainer to remain parties to the suit.

Stehn v. Bernarr MacFadden Foundations, Inc.

434 F. 2d 811

Issue: Improper instruction and supervision of wrestling

Level of Court:	U.S. Court of Appeals
Date/State:	1970/Tennessee
Decision:	Plaintiff/Affirmed

The plaintiff suffered a broken neck resulting in quadriplegia as a result of participating in a wrestling match in class. Trial court evidence established that the eighth-grade boy had been in the wrestling class for six weeks and attended class four times a week. At the time of the

accident, the 137-pound plaintiff was wrestling a 150-pound boy. Two matches were going on at the time, with the plaintiff's match being refereed by another student. The plaintiff was in the down position when the round started. The boy in the up position attempted to immediately turn the plaintiff from his front to his back using the "agura" move. The skill was taught by the instructor, although the term "agura" was unknown to the expert witnesses and was not found in texts on the sport. The plaintiff testified that, although the students were taught how to perform the move, they were not taught how to counteract it defensively. The plaintiff had wrestled a previous match to the one in which he was injured and had approximately seven minutes of rest between matches. The first match was also against a heavier opponent.

The defendant moved for a directed verdict at the conclusion of the trial. The trial court denied the motion, and the jury returned a verdict for the plaintiff and awarded $385,000 in damages. The defendant appealed, charging that the evidence was insufficient to support a verdict against it. The court of appeals upheld the lower court decision while ruling that adequate standards were provided against which the jury could compare the quality of instruction and supervision and the manner in which the class was conducted. The court ruled that the evidence created a proper question for jury determination that precluded a directed verdict. While holding that no single factor in the plaintiff's charges would establish a breach of duty in and of itself, the court ruled the defendant's conduct in each of the following areas was relevant and could be used by the jury in deciding whether the instruction and supervision were proper. Specifically, the jury was free to examine and weight the following factors in making its determination:

1. The number of pupils in the class;
2. The number of matches being supervised by the instructor at one time;
3. The training and experience of the teacher/coach;
4. The use of other students as referees;
5. The weight difference between wrestlers; and
6. The number of matches allowed per student and the amount of rest between matches.

NOTE: The court in this case listed a number of factors that could be considered by the jury in making its determination on negligence. It is important to note that although any individual factor may not prove fatal to a defendant in a negligence action, the interaction of two or more factors can often result in a finding of negligent behavior. In this case, it is quite possible that the interaction of multiple factors contributed to the jury's finding. For example, although the weight difference between the two wrestlers and the rest period between matches were two separate

issues, the interplay between the two could conceivably be what contributed to the injury.

Lilley v. Elk Grove Unified School District
80 Cal.Rptr. 2d 638

Issue: Wrestler injured during demonstration with coach

Level of Court:	Court of Appeals, Third District
Date/State:	1998/California
Decision:	Defendant/Affirmed

The plaintiff, a 14-year-old member of his school wrestling team, was injured during a demonstration of a wrestling move with his coach on the second day of practice. Trial evidence indicated that the coach divided the team into groups according to size and weight for practice on the day of the accident. The plaintiff, who weighed 230 pounds, was placed in the heavyweight group. The groups were rotated between stations involving various strength and conditioning activities. At one station, the coach spent a short time giving a brief introduction to actual wrestling.

The coach gave a demonstration intended to show students that wrestling was a sport of control and not like what they see on television. He demonstrated a control hold and how to block an opponent from obtaining the hold. He had the wrestlers step through the maneuver in slow motion. Because he did not want the students in a combative situation this early in practice, the coach moved from the lightest to the heaviest student and brought them out onto the mat one at a time with him. He put the control hold on each wrestler and gave them 15 seconds to attempt to escape the hold. During the course of his turn, the plaintiff placed his right hand on the mat to brace himself and ended up breaking both bones in his forearm. An operation was necessary to insert plates and screws to stabilize the bones.

The plaintiff filed suit, charging the district and coach with negligent supervision. The district petitioned the trial court for summary judgment to dismiss the case, claiming it was barred from liability under the primary assumption of risk doctrine. The trial court granted the district motion, and the plaintiff appealed.

On appeal, the plaintiff argued that the Education Code required the district to provide supervision in order to protect students from injury or harm and that this duty superceded or eliminated primary assumption of risk as a defense to their alleged negligence.

The appellate court ruled that the statute does not make school districts insurers of student safety and that nothing in the statute showed any intent of the legislature to modify common law assumption of risk principles. The court held that any imposition of a duty to protect student-athletes from risks inherent in a sport like wrestling would "fundamentally

alter the nature of the sport" and would discourage school districts from offering the sport out of fear of litigation. The court recognized that part of the learning experience in sports is learning how to deal with success and failure, gaining an understanding of the value of teamwork, sportsmanship, and discipline, and accepting responsibility for one's choices and actions, including the assumption of risks that are inherent to the activity. The court held that the doctrine of primary assumption of risk is consistent with, not contrary to, the goals and responsibilities of schools.

The court ruled that the trial court correctly determined that primary assumption of risk served as a complete defense to the plaintiff's action and that the granting of summary judgment was proper.

Armlin v. Board of Education of Middleburgh Central School District

320 N.Y.S. 2d 402

Issue: Supervision and instruction in multiple-station gymnastics class

Level of Court:	Supreme Court, Appellate Division
Date/State:	1971/New York
Decision:	Plaintiff/Affirmed

A fifth-grade student was injured in her physical education class as a result of a fall from the rings. Evidence indicated that the rings were high enough to be out of reach of the plaintiff and that a mat was placed underneath. At the time of the accident, there were six different pieces of apparatus on the floor, with the 35 girls in the class divided equally among the six stations. The accident occurred when the girl stood up in the rings and, while jumping out, fell backwards and landed on her back.

The plaintiff testified at trial that she had dismounted from the rings in the same manner on numerous other occasions and had seen other students do the same. At no time did the teacher object to what the girls were doing. The plaintiff testified the girls were told they could do anything they wanted on the rings except swing. Testimony indicated that the teacher never demonstrated any stunts on any of the apparatus and that, although spotters were provided, they never received any instruction on spotting procedures.

The teacher testified that she did not see what the plaintiff was doing or see her fall. She also testified that standing up in the rings and jumping out backwards would be dangerous and that in so doing, the girls "could kill themselves." The state physical education syllabus stated that in a fifth-grade gymnastics class, "the apparatus and the class should be so placed as to be entirely in view of the teacher."

The appellate court upheld the lower court finding of negligence. It ruled that a fair interpretation of the evidence allowed a reasonable jury to conclude that the teacher was negligent in conducting, instructing, and supervising the physical education class.

Fosselman v. Waterloo Community School District
229 N.W. 2d 280

Issue: Appropriateness of game—Bombardment

Level of Court:	State Supreme Court
Date/State:	1975/Iowa
Decision:	Defendant/Affirmed

The plaintiff received multiple facial fractures as a result of his participation in the game of bombardment in his physical education class. Bombardment is a game of dodge ball that begins by placing a number of balls on the centerline of a court, lining up opposing teams on opposite ends of the court, and, on a command to start, having players race to the center to grab a ball. Players who get control of a ball must return to a designated line before they may start to throw the ball at opposing team members. When hit by a ball, a player is out of the game. The plaintiff received his injuries when he charged the centerline to grab a ball and struck his face on the knee of an opposing player charging from the other direction. The teacher was either participating or observing from the side of the court, but, in either case, he did not see the accident happen.

Suit was brought against the school district, the board of directors, the individual members of the board, the superintendent, the director of health and physical education, the principal, and the teacher. The claim charged that the defendants were negligent in permitting the game to be played, in requiring the plaintiff to participate, and in their supervision of the class. The defendants filed a motion to have the case dismissed. The trial judge ordered the case dismissed against all defendants except the teacher. The charge of negligence against the teacher for permitting the game to be played when he knew or should have known that it was dangerous and likely to cause injury was allowed to go to trial. The jury returned a verdict in favor of the defendant.

The supreme court upheld the lower court dismissal of charges related to supervision, holding that no evidence was introduced suggesting any increased supervision could have prevented the accident. The court held that, in his appeal, the plaintiff failed to cite any authority to justify overturning the jury verdict in favor of the teacher. The court noted that significant evidence was introduced indicating the bombardment game was played in the surrounding schools and was recognized as a proper activity in physical education classes. The court ruled that the jury verdict was not contrary to the evidence.

NOTE: Although the game of bombardment is not an inappropriate activity in and of itself, steps can be taken to make the activity safer and more enjoyable for students. Anticipating the risk of collisions, the teacher in this case could have easily modified the procedure for beginning the game without altering the objectives and intent of the activity. It would seem plausible that a number of courts might find that having students charge head-on after a ball placed on the centerline might foreseeably result in collisions and injury. The duty of physical education teachers is to foresee risks and to take *reasonable* steps to reduce risk where it exists.

School Board of Broward County v. Beharrie

695 So. 2d 437

Issue: Instruction and Supervision—
Soccer coach instructs player to "waste" an opponent

Level of Court:	District Court of Appeals
Date/State:	1997/Florida
Decision:	Plaintiff/Reversed

The plaintiff received injuries after being fouled during a high school soccer match. Evidence presented at trial indicating that, prior to the foul, the opposing coach yelled at his offending player to "take him" and "waste him" was not contradicted. The trial court returned a substantial verdict in favor of the plaintiff, based on a claim of negligent instruction and supervision. The defendant appealed.

The court of appeals reversed and remanded the case back to the trial court to render a verdict for the school district. The court held that the basis for the claim, negligent instruction and supervision, was proper. However, the court ruled that there was a well-established rule of law forbidding the stacking of an inference upon an inference. Although the injured player and the linesman, standing several yards away, heard what the opposing coach yelled, the student who committed the foul denied hearing the coach, as did another player who collided with the plaintiff immediately after he was fouled. In noting that the game environment was noisy, the court ruled that it could not be inferred, to the exclusion of all other inferences, that the fouling player heard what his coach yelled. Because of this, the court ruled that it could not be properly inferred that the player acted upon what he heard.

NOTE: Had others clearly heard what the coach yelled, the trial court decision in this case may very well have been allowed to stand. If the court had ruled the only inference to be drawn from the evidence was that the player heard his coach, then the court could have properly inferred that the player acted upon what he heard. Needless to say, in the heat of

competition within contact sports, it is critical that all instructions, including those meant to light the competitive fire under athletes, be proper and within the rules. Coaches need to be extremely careful to not encourage athletes to go beyond the boundaries of proper play.

Peterson v. Multnomah County School District No. 1
668 P. 2d 385

Issue: Inadequate amount of practice prior to first contact scrimmage

Level of Court: Court of Appeals
Date/State: 1983/Oregon
Decision: Plaintiff/Affirmed

A high school football player suffered a neck injury during football practice, leaving him a quadriplegic. Trial evidence indicated the player was a 15-year-old sophomore participating in a contact scrimmage on what was only the second day of preseason practice. The contact scrimmage ran contrary to a school district advisory cautioning against any contact during the first week of practice. The injury occurred as a result of using the helmet as the point of contact when tackling another player. Although evidence indicated that the team was warned about the use of "spearing" before practice began, it was alleged that the injured player had used the same technique on previous plays and had received praise by the coaching staff for his hard-hitting tackles.

Two years after suit was filed against the school district, the plaintiff filed an amended complaint adding the Oregon School Activities Association (OSAA) as a defendant. The OSAA is a private, nonprofit corporation that, as a member of the National Federation of State High School Associations, operates to regulate a variety of matters related to school activities and competition between member schools.

The National Federation adopted safety recommendations relative to contact scrimmages in preseason football developed by a joint committee of the National Federation and the American Medical Association. However, the OSAA did not adopt the recommendations as requirements for its member schools and did not forward the recommendations on to member schools. One of the recommendations was that practice games or "game condition scrimmages" be prohibited during the first two weeks of practice.

The school district settled with the plaintiff out of court prior to trial and awarded the plaintiff $100,000, which is the statutory limit on the liability of school districts and its employees under the Oregon Tort Claims Act.

The case continued against OSAA, charging that it was negligent for failing to require or to recommend that member schools undertake safety measures related to football practice, specifically, that contact scrimmages not take place during the first week of practice and that "spearing" be prohibited. The jury awarded the plaintiff $1,800,000 in damages.

Having found the plaintiff to be 40% negligent and the OSAA 60% negligent, the damages assessed against the OSAA were reduced to $980,000 in accordance with the comparative fault doctrine embodied in the Oregon Tort Claims Act. The $100,000 out-of-court settlement with the district was subtracted from the $980,000, leaving the OSAA to pay $880,000.

On appeal, the OSAA claimed the filing of the suit against OSAA failed to meet the time requirements as set forth by the tort claims act and that it was not responsible for the school's actions. It was further alleged that the award exceeded the $100,000 cap on liability as set forth by the tort claims act. The court upheld the lower court finding. It ruled that the suit was not time-barred and that the OSAA did have responsibility for its failure to make safety recommendations to its member schools. The court also held that private organizations are not entitled to the $100,000 limited liability cap under the Oregon Tort Claims Act because the liability cap applies to public entities only.

Kain v. Rockridge Community Unit School District No. 300
453 N.E. 2d 118

Issue: Violation of mandatory number of practices before competition rule

Level of Court:	District Appellate Court
Date/State:	1983 Illinois
Decision:	Defendant/Affirmed

The plaintiff brought suit against the school district and his high school football coach as a result of injuries he received during a game. The suit claimed the defendants were negligent in allowing him to play even though he had not participated in the minimum number of practice sessions required by Illinois High School Association (IHSA) rules. The trial court granted the defendant's motion to dismiss the case, holding that the district and coach were acting in loco parentis and, as such, were not liable for ordinary negligence.

On appeal, the plaintiff argued that the immunity statute applies only to situations in which the teacher has discretion and, since the IHSA rule prohibits playing football without adequate practice, the coach has no discretion and, therefore, the immunity statute is inapplicable.

The court ruled that the tort liability statute made no such distinction between discretionary and nondiscretionary acts. In upholding the lower court dismissal of the case, the appellate court ruled that the defendants were statutorily immune from suit.

NOTE: In jurisdictions not covered by immunity, courts have generally looked with disfavor at schools or school districts that violate their own

adopted rules. If a rule is adopted for safety reasons, any violation of the rule is going to be very difficult to defend when a student or athlete injury occurs.

Leahy v. School Board of Hernando County
450 So. 2d 883

Issue: Lack of special instructions for those without football helmets in football drill

Level of Court:	District Court of Appeals
Date/State:	1984/Florida
Decision:	Defendant/Reversed and remanded

The plaintiff was one of several freshmen who did not receive a helmet when they were issued on the first day of practice because of the unavailability of the correct sizes. No special instructions were given by the football coaches to those who had not received helmets about any limitations on their participation in football practice. On the second day of practice, all players took part in an agility drill. This drill involved having 12 experienced players, with helmets on, getting on their hands and knees and lining up in a row. The remaining players were instructed to "go to each lineman, hit him on the shoulders with both hands, fall and roll on the ground, and then get back up to their feet as quickly as possible and move on to the next lineman." The drill was described as noncontact by the coaches, although some contact clearly took place. The coaches supervised the drill from the sidelines. As the drill progressed, it became a little rougher, with harder hitting and some people being knocked down. The plaintiff was the first player without a helmet to begin the drill. As his hands hit the lineman's shoulders, as instructed, the lineman straightened his arms or raised his head and the plaintiff's face collided with his helmet. The plaintiff suffered facial injuries in addition to shattering his front teeth. The trial court awarded a directed verdict for the defendant, and the plaintiff appealed.

On appeal, the plaintiff charged that the evidence supported four alleged acts of negligence on the part of the defendant and that the trial court, therefore, erred in granting a directed verdict for the defendant. The plaintiff alleged negligence in the following:

1. Failing to issue a helmet;
2. Failing to give any special instructions to those participating without helmets;
3. Allowing participation in a contact drill between players with helmets and players without helmets; and
4. Not limiting the intensity of participation involving those without helmets when it became apparent the drill was becoming aggressive.

The appellate court reversed the lower court decision and remanded the case for a new trial. The court ruled that the plaintiff had sufficiently argued a case of negligent supervision, as well as negligence in failing to provide adequate safety equipment, and should have been entitled to a jury determination based upon the evidence.

Darrow v. West Genesee Central School District
342 N.Y.S. 2d 611

Issue: Improper instruction—Insufficient safety instructions in soccer

Level of Court:	State Supreme Court, Appellate Division
Date/State:	1973/New York
Decision:	Dismissed/Reversed

The plaintiff was injured while playing line soccer during his physical education class. The class was divided into two teams and arranged in opposing lines. The ball was centered between the two lines. Each team member was given a number with corresponding numbers being given to each of the players on the other team. The teacher called out one or more numbers and those whose numbers were called ran out and attempted to kick the ball through the opposing team's line.

The plaintiff alleged negligence in the teacher's failure to provide proper safety instructions. On the day of the accident, the plaintiff and another student ran into each other while going for the ball. By the teacher's own admission, he did not instruct the boys as to what they should do when two players met at the same time. Expert testimony indicated reasonable care required a demonstration and an explanation that students must play the ball as much as possible with their feet without charging to the ball to the point of bringing about bodily contact and without pushing and shoving.

The trial court dismissed the case without sending it to the jury. The supreme court reversed the dismissal and ordered a new trial. In reversing the dismissal, the supreme court held that teachers have an affirmative duty to instruct students in physical education classes on reasonable safety precautions to be observed while engaged in class activities. In noting the teacher's admission that he did not instruct the students as to what to do when two players met the ball at the same time, the court held there was sufficient evidence to warrant an examination and determination by the jury.

Sanchez By and Through DiFerdinando v. School District 9-R

902 P. 2d 450

Issue: Mainstreamed student with cerebral palsy injured during gymnastics class

Level of Court:	Court of Appeals
Date/State:	1995/Colorado
Decision:	Defendant/Affirmed

The plaintiff was born with cerebral palsy and limited intellectual capacity. She was mainstreamed into a regular physical education class along with nondisabled students. While engaged in a gymnastics unit within the physical education class, the plaintiff suffered a knee injury when she fell while attempting a vaulting exercise.

The plaintiff filed a tort claim, as well as a Section 1983 claim under the United States Code, charging that her rights, as a disabled student, to a free and appropriate public education were violated. The school district filed for a summary judgment for dismissal on all claims. The motion was granted, and the plaintiff appealed.

The court of appeals upheld the trial court summary judgment. In upholding the dismissal of the Section 1983 claim, the court ruled that the plaintiff failed to adequately state a claim for relief. The court held that in order to prevail on a Section 1983 claim, a plaintiff must show that an official policy or custom was the cause of the constitutional violation depriving them of such an education.

The court found that there was no official policy or custom denying the plaintiff of her rights. The court found just the opposite. Policies were in place that assured the plaintiff the right to receive the free and appropriate education to which she was entitled to under federal law. The court ruled that the alleged failure of the district to provide supportive services and aides in physical education classes for mainstreamed disabled children did not constitute a policy that denied the plaintiff's rights.

The appellate court also upheld the summary judgment on simple negligence. Colorado law confers immunity on school districts, with an exception to immunity where a dangerous condition of any public building can be shown. Dangerous condition is defined under Colorado statute as a "physical condition of a facility or the use thereof which poses an unreasonable risk to the health and safety of the public." The plaintiff had argued that the manner in which the facility was being used rendered the facility dangerous. The court ruled that in order to apply the dangerous condition exemption to immunity, it must be shown that a physical or structural defect exists in the building.

NOTE: Other jurisdictions have held districts liable under dangerous condition exemptions to immunity where it was shown that the physical condition or layout of a facility made it dangerous for a particular activity. In this case, there was no evidence suggesting that the facility was dangerous for vaulting. Rather, the allegations centered upon the appropriateness of the disabled student vaulting under the given conditions. This becomes an issue of supervision and instruction and not equipment, grounds, or facilities.

Prudent practice requires that physical educators keep activities within the capability of individual students and that students be provided with adequate and proper instruction as well as supervision. When dealing with mentally and physically disabled students who are mainstreamed into the regular physical education class, teachers need to be careful in monitoring student understanding of instructions and expectations as well as their ability to perform.

Individualized instruction is good educational practice for all students, not just the disabled. When a class contains mainstreamed students, however, the practice of simply teaching to the masses can invite disastrous results. Physical educators should not only be aware of but should be active participants in the development of physical education individualized education programs (IEPs) for special needs students.

Alban v. Board of Education of Harford County

494 A. 2d 745

Issue: Improper placement and safeguards for handicapped student in regular class

Level of Court:	State Court of Appeals
Date/State:	1985/Maryland
Decision:	Defendant/Affirmed

The plaintiff, an eighth-grade mentally disabled student enrolled in a regular physical education class, received serious injuries when she attempted a maneuver on the Swedish box. The plaintiff's IEP called for placement in the regular physical education program. The parents of the injured student filed suit, claiming the district was negligent in placing their daughter in the regular physical education class with no special safeguards to protect her from injury.

The trial court awarded a directed verdict for both the school district and the teacher. The court held that the IEP was designed to provide a combination of special education and regular classes and that, once the IEP had been formulated and approved by the parents, the student was to be treated as a normal participant in the physical education class. The court further held that absent the exhaustion of administrative remedies

(i.e., a due process hearing) provided by statute for challenging placements, the question of placement could not properly come before the court.

The Court of Appeals upheld the trial court while noting that the plaintiff, once part of the regular class, enjoyed the same remedies for injury as did the rest of the students in class. The district and its teacher were obligated to meet the standard of reasonable care in the conduct of the physical education class. In their action, however, the parents only charged negligent classroom placement and not negligent conduct of the class.

NOTE: Physical educators would be well advised to keep all activities within the ability of individual students. Individualized instruction for all students, not just those on a specific IEP, is sound educational practice. If physical educators teach to the masses and have the same expectations for everyone in a given class, they leave themselves vulnerable in the event of an accident.

Although the actual placement of the above student was improperly before the court, the appropriateness of a particular exercise for the individual student and the standard of reasonable care on the part of the teacher could certainly have been challenged.

Hedges v. Swan Lake and Salmon Prairie School District No. 73

812 P. 2d 334

Issue: Student struck by shot thrown by teacher

Level of Court:	Supreme Court
Date/State:	1991/Montana
Decision:	Defendant/Affirmed in part, reversed and remanded in part

The plaintiff, a 12-year-old elementary school student, was injured when struck by a shot thrown by her teacher. The plaintiff was directed to mark where the shots landed. She was marking a previous throw when struck by another shot thrown by the teacher. By statute, school districts and their employees were immune to liability for negligence in Montana. The trial court granted summary judgment for both the defendant teacher and defendant school district.

On appeal, the summary judgment for the teacher was upheld. The judgment for the school district was reversed, however, as the court found that the purchase of liability insurance by the district waived its immunity to the extent of its insurance coverage. The case against the district was remanded to the trial court for further proceedings and determination.

NOTE: The issue considered and discussed by the appellate court in this case was the impact of purchasing liability insurance on the immunity granted to school districts by statute. Physical educators and coaches need to focus closely on the activity itself. Numerous accidents involving the shot put occur each year. Discussions by the authors with teaching and coaching peers reveal a significant number of near misses in class and team participation in both the shot put and discus throw. Because of the potential deadly consequences of mishaps in these activities, it is imperative that carefully planned and communicated procedures for the teaching and supervision of these activities be developed at the building level.

Step-by-step procedures and expectations need to be developed that clearly establish the responsibilities of the instructor, the thrower, the retriever, the measurer, and the spectator. Expectations and safety precautions need to be repeated often, and clear warnings about the potential consequences of injury need to be presented to students. It is not enough to communicate and repeat procedural and behavioral expectations. Established expectations need to be consistently enforced.

In Summary

The Reasonably Prudent Physical Educator or Coach:

1. Selects activities appropriate for the age of the student being instructed and is familiar with any existing district or state scope and sequence documents.
2. Develops written unit plans for each unit of study or sport season to ensure that proper progressions and safety are built into each activity unit.
3. Develops daily written lesson plans that allow for adequate warm-up, instruction, and practice with both classroom management and safety considerations included.
4. Gives proper instructions, for both skill and safety, that conform to recognized standards employed in the professional field.
5. Provides adequate instruction before requiring student or athlete participation in any activity, including verbal instructions as well as teacher and/or student demonstrations.

Continued

6. Analyzes his/her teaching or coaching methods not only for their effectiveness but also for their attention to student and athlete safety.
7. Provides adequate safety instructions prior to any activity.
8. Provides clear warnings to students and athletes as to the specific risks involved in any activity or in the use of equipment, facilities, or grounds.
9. Provides adequate and proper modifications to activity, where appropriate, for special needs students or those returning from injuries or illness.
10. Avoids teaching to the masses and individualizes instruction wherever appropriate.
11. Teaches or coaches only those activities with which he/she is familiar and qualified to teach/coach.
12. Does not coerce students to perform.
13. Follows all guidelines related to the program that are set forth by the school, district, state, or activity association.
14. Requires an adequate amount of practice before competition.
15. Does not attempt to instruct or supervise an excessive number of students or athletes, especially in activities involving elevated levels of risk.
16. Continues to upgrade both skill and knowledge through participation in workshops, continuing education, and other in-service opportunities.

Supervision

Improper supervision is alleged as at least a contributing factor in most negligence actions against teachers, coaches, and administrators of activity and sport programs. The supervisory duties of physical education and sport personnel are many and require more than mere presence or passive supervision.

As with the duty of instruction, staff training, knowledge, and skill are critical issues to the duty of supervision. To effectively manage risk through supervision, physical education and sport staff must be able to foresee the risk of harm related to any given activity as well as to student or athlete action. It is crucial that all staff keep current with the best practices in the field in order to position themselves to better foresee the risks associated with the activities they deliver to students and athletes. Ongoing staff development is critical in meeting this goal.

Although absence from one's class or team does not constitute negligence as a matter of law, courts have pretty much agreed that it is reasonable to expect teachers and coaches to be present in classes and practice sessions that they have been entrusted to teach or coach. Decisions on negligence due to temporary absence from the classroom have gone both ways. In determining whether or not temporary absence on the part of a teacher or coach constitutes negligence, the courts generally examine the equipment with which and the activity in which the students or athletes are working. The courts will also examine the age and composition of the group, the instructor's past experience with the group, and the reason and duration of the teacher's or coach's absence.

Despite the best efforts of teachers and coaches, injuries will occur. Emergency procedures should be developed that provide guidelines and protocols to be followed when injury does occur in order to insure both the proper care of the injured and the supervision of the remainder of the class.

In addition to presence in the classroom or activity area, the supervisory duties of physical education and sport staff generally include passage to and from the activity and the locker room and hall supervision. Case law has made it abundantly clear that teachers and coaches are expected to be where assigned on time and to provide active rather than passive supervision.

Active supervision requires more than mere presence and requires both general and specific supervision. General supervision requires an overview of the entire group. Teachers need to position themselves and move around the instructional area so as to keep the entire group in view and in order to detect hazardous conditions or behavior. Specific supervision involves the interaction between an individual or small group of students and the teacher or coach. Physical education and sport personnel are expected to monitor and keep activities within the skill level of individual students and athletes; to keep students and athletes

from participating in dangerous and unsafe activities; to enforce class, team, and school rules; to keep records and be aware of the health status of individual students and athletes; to make accommodations for size, age, and skill differences when matching students for participation or competition; and to provide spotting and other specific supervision in activities of elevated risk, such as gymnastics, swimming, wrestling, and football.

The skill level within the average physical education class varies greatly from student to student. Depending on the activity, it may or may not be reasonable to expect all students to perform at the same level or even to perform the same task. Individualization of instruction not only makes good sense educationally, but it also makes for good practice from a liability standpoint. It is one way to help staff effectively monitor individual student progress and to assure that instructional demands are within the skill capability of the individual student. In the athletic setting, this is somewhat taken care of as athletes are grouped by ability and placed on either a frosh, junior varsity, or varsity roster.

Students, especially younger ones, do not always display the best judgment in their activity with peers. Physical education and sport staff, through their efforts of supervision, should guard against students and athletes participating in dangerous and unsafe activities. In the physical education and sport setting, this becomes especially important in the moments before class or practice actually starts and students begin to assemble in the gymnasium or on the practice field. Horseplay is not a harmless passage of time, and those moments before the start of class or practice cannot be "down time" for the teacher or coach. In guarding against unsafe and dangerous activities, physical education and sport personnel also have to be alert to those students, who for one reason or another, are determined to perform or attempt skills that are beyond their capability.

Reasonable classroom, team, and schoolwide rules are a necessity for the efficient and safe operation of school programs. This is especially true for the physical education and sport setting due to the nature of the activities and the equipment and facilities being used to carry out these programs. Courts have not been very understanding of schools and staff when they fail to enforce these established rules. The message sent by the courts is clear. Schools and staff are not free to violate or fail to enforce their own rules. To do so has been held to constitute negligent behavior.

Student discipline is an important element in all school programs. Effective, productive, and appropriate measures for student discipline need to be established. The use of corporal punishment makes physical educators and coaches vulnerable to litigation and should be avoided. This includes the prescription of exercise such as laps and push-ups for discipline or punishment purposes.

Being aware of the health status of the students in a class or on a team is a critical responsibility of physical educators and coaches. A number of permanent and temporary conditions can affect a student or athlete's

ability to fully participate in the activities within the given program. It is clearly within the responsibility of the physical educator or coach to be aware of any conditions that might preclude an individual student or athlete from fully participating in a given activity as well as being aware of those conditions that might require first aid and prompt attention. Physical education and sport staff would be well advised to be aware of all students in their classes or on their teams who have medical conditions such as seizure disorders, bee sting allergies, severe asthma, or any other condition that might require prompt action on their part in a crisis situation. Teachers and coaches should also be alert to contagious conditions of participants and employ measures to prevent the spread of these conditions to other participants who, due to the nature of the activity, must come into close personal contact or share equipment with the infected individual.

It is also imperative that teachers and coaches keep files on students and athletes who have brought in medical excuses for temporary exclusion from given activities. Any student who is removed from participation by a doctor's note should only be readmitted with the doctor's written permission. Physical education and sport personnel need to be aware of the reason for any extended absence of a student and, where necessary for health and safety reasons, the student's return to activity should be gradual and modified.

Even though with certain students it's a temptation to do so, excuses from home or from the student relative to his or her inability to participate should not be dismissed lightly. It is a much safer policy to honor the excuse for that day and follow up with the home in those cases where the teacher or coach suspects a problem other than health. The courts will not view favorably any attempts by physical education or sport personnel to diagnose possible medical problems.

Although much more so at some grade levels than others, each physical education class is characterized by variances in size, experience, and, in some cases, age. These variances can be extreme in some instances. It is the responsibility of the physical educator or coach to make accommodations for these variances when matching students up for general participation as well as competition. Although this is often attended to in individual activities such as combatives, it is equally neglected in a good number of others. Accommodations should be made whenever there is a foreseeable risk of physical contact of any type. Again, in the athletic setting, this is somewhat accomplished by the ability grouping that is inherent to the forming of athletic teams. Some care still needs to be taken, however, to avoid significant mismatches.

Hazing represents a special concern relative to supervision. It can inflict not only physical injury but severe emotional harm as well. Teachers and coaches must adopt a zero tolerance policy for hazing or

any other form of harassment, intimidation, or discrimination. Hazing is addressed in detail in the later section on miscellaneous issues.

The courts, while being very clear about the required duty of teachers and coaches to provide active supervision, have been equally clear in holding that they are not insurers of student safety. Courts have clearly held that proper supervision does not necessarily require constant and continuous sight of all students by supervising teachers and coaches. The nature of the activities as well as the age, capacity, experience, and number of participants play a role in determining the extent of supervision required.

The following cases are offered as further illustration of how the courts view the critical issue of supervision.

Dailey v. Los Angeles Unified School District
470 P. 2d 360

Issue: Inadequate supervision—Failure to actively supervise in assigned area of responsibility

Level of Court:	State Supreme Court
Date/State:	1970/California
Decision:	Defendant/Affirmed/Reversed

Parents of a deceased high school student brought a wrongful death suit against two physical education teachers and the school district as a result of a "slapboxing" match that occurred outside of the gym during the lunch hour. Testimony showed that two boys approached the gym during their lunch hour, their next class being physical education. They stopped outside of the gym and engaged in "slapboxing," a form of boxing using open hands rather than fists. The activity was in fun. The plaintiff's son fell backward during the course of the activity and fractured his skull. He died a few hours later.

The parents claimed the school was negligent in its supervision during the lunch hour. Testimony indicated that according to the building plan, the physical education department had responsibility for the general supervision of the gym area. The department chair, one of the defendants, testified that although the physical education department had supervision duty for the gym area, he had never been told to have a duty roster assigning particular teachers supervision duty on particular days. He testified there was a teacher on duty in the gym office on the day of the accident. The teacher on duty was eating lunch and doing lesson plans. He was not in a position to observe the accident.

The trial court issued a directed verdict for the defendants holding that the evidence, in the light most favorable to the plaintiff, was insufficient to draw any inference of negligence in support of the plaintiff's claims. The court of appeals upheld the directed verdict.

On appeal, the state supreme court first looked at the duty owed by school districts to students on school grounds. They held that California law had long imposed a duty to supervise the conduct of children on school grounds at all times and to enforce the rules and regulations designed for their protection. The court noted that lack of supervision or ineffective supervision under California law could constitute a lack of ordinary care on the part of those responsible for supervision. The court further noted the student's death, as a result of his own conduct, would not preclude a finding of negligence on the part of the school district, as adolescents are not adults and should not be expected to exercise the same degree of discretion and judgment as an adult.

The court ruled that, in light of the building plan assigning general supervision responsibility to the physical education department for the gym area, there was evidence that the department had neglected to develop a supervision duty schedule. There was evidence that the department head had failed to instruct his subordinates on what was expected of them relative to their supervision responsibilities. There was also evidence that the teacher on duty the day of the accident did not supervise at all but rather ate lunch, talked on the phone, and did lesson plans. The court noted that neither of the two teachers named as defendants heard or saw anything the day of the accident despite the testimony indicating the activity attracted a crowd of 20-30 people.

Based on the above, the supreme court held that there was sufficient evidence from which a jury could conclude that those charged with supervision were negligent in exercising due care in the performance of their duties. The supreme court reversed the directed verdict.

Cirillo v. City of Milwaukee

150 N.W. 2d 460

Issue: Inadequate supervision—Teacher absent from gym

Level of Court:	State Supreme Court
Date/State:	1967/Wisconsin
Decision:	Defendant/Reversed

The plaintiff, a 14-year-old high school student, was injured during a game of keep-away in his physical education class while the physical education teacher was absent. Suit was brought against the teacher, alleging negligence in failing to provide rules to guide the class, attempting to teach an excessive number of students, and absenting himself from the gymnasium.

Trial court evidence showed that after taking roll, the teacher threw out some basketballs and told the 49 boys in the class to shoot around. The teacher left the class unsupervised at this point. Before long, a game

of keep-away developed that became increasingly rowdy, with running, pushing, and tripping occurring all over the floor. It was during this "game" that the plaintiff fell and sustained injury. The teacher was absent from the class for 25 minutes. The defendant denied negligence and alleged contributory negligence on the part of the plaintiff for failing to follow directions and in knowingly participating in the rowdy game in the gym. The defendant asked for and received a summary judgment, and the plaintiff appealed.

The state supreme court noted that the state summary judgment statute only allowed summary judgment for a defendant if the defendant's affidavit presents evidentiary facts showing that his or her defense is sufficient to defeat the plaintiff. It further stated that, as a drastic remedy, summary judgment should only be used where there is no substantial issue of fact or inferences to be drawn from the facts. The supreme court concluded substantial issues of fact were in question and, as such, were proper for jury consideration. The court held that a jury might find negligence in the teacher's extended absence from the class. The court said, "It does not seem inherently unreasonable to expect that teachers will be present in classes which they are entrusted to teach." The court was careful to note, however, that the absence of a teacher does not constitute negligence as a matter of law. The teacher's duty is to use reasonable care. In determining whether a teacher's absence represents a breach of reasonable care, the court suggested a number of factors may bear on this determination, including the following:

1. "The activity in which the students are engaged;
2. The instrumentalities with which the students are working;
3. The age and composition of the class;
4. Past experience with the class; and
5. The reason for and duration of the teacher's absence."

The court ruled that only in rare cases is it permissible for a court to hold as a matter of law that the negligence of one party constitutes at least 50% of the total and that the apportionment of negligence is almost always for the jury. The court recognized that the ages of the respective parties were an important consideration when apportioning negligence.

The defendant claimed that permitting recovery for the plaintiff would "constitute the defendant an insurer of the safety of Milwaukee school children." The trial court agreed with this claim. The supreme court, while recognizing that a teacher is neither immune from liability nor an insurer of student safety, held that he/she is liable for failure to use reasonable care. It ruled that to permit recovery where a defendant was negligent was not equivalent to rendering the defendant an insurer of student safety. The supreme court reversed the summary judgment for the defendants.

Barretto v. City of New York
655 N.Y.S. 2d 484

Issue: Lack of Supervision—Volleyball player paralyzed after attempting to dive over partially raised net

Level of Court:	Supreme Court, Appellate Division
Date/State:	1997/New York
Decision:	Plaintiff/Reversed and dismissed

The plaintiff suffered a spinal cord injury resulting in paralysis from the chest down after attempting to dive over a partially raised volleyball net. The plaintiff, 18 years old, was a member of his high school volleyball team at the time of his injury. Evidence at trial indicated that prior to the start of practice, the coach opened up the locker room and the gym. After the players were dressed, the coach opened up an equipment closet and, placing the team captains in charge, instructed the team members to get the volleyball standards out and set up the nets. After warning team members to not horse around, the coach left the gym. Evidence was conflicting as to whether he left to change clothes or to look for volleyballs. He was gone for 20 minutes.

After fastening the standards to the floor, the plaintiff and another player attached the nets and began cranking them up. With other players sitting in the gym, the plaintiff and the other player stopped raising the net. The other boy ran at the net from a distance of 30-40 feet, with the intention of jumping over the net. He stopped without jumping, at which time the plaintiff said he could do it. The net was 3-4 feet above the ground. The plaintiff grabbed a nearby mat and placed it under the net. Despite warnings by other team members to not horse around, the plaintiff ran from a distance of 30-35 feet and attempted to jump headfirst over the net, with the intention of landing on his hands and rolling onto the mat. The plaintiff caught his waist on the net, causing his feet to flip up in the air. He landed on his head, rather than on his hands as he intended, and his spinal injury and paralysis resulted.

The trial court rendered an $18,000,000 judgment holding the district negligent in their supervision of the volleyball team. Damages were apportioned between the defendant and plaintiff, holding the district 80% at fault and the plaintiff 20% at fault.

The Supreme Court, Appellate Division, reversed the trial court decision and dismissed the case. In making its ruling, the court ruled that, as a voluntary participant in a school-sponsored athletic program, the district owed the plaintiff a duty to exercise ordinary reasonable care in protecting him from unassumed, concealed, or unreasonably increased risks. The court noted the age of the plaintiff and the fact that there had been no previous problems with team members during the setup time before practice. The court found nothing in the record to suggest that the

risk to which the plaintiff was exposed constituted either an unassumed, concealed, or unreasonably increased risk. The court held that the situation and the risks inherent in setting up the nets did not warrant or require constant supervision of the players and that the plaintiff voluntarily assumed the risk of injury due to his own inappropriate behavior.

NOTE: The plaintiff was clearly old enough to recognize the danger of his behavior and shoulder responsibility for his own inappropriate decision to dive over the net. Nonetheless, coaches and teachers are again cautioned against leaving students and athletes unattended. Courts will typically look at the reason and length of an absence, the age of the students/athletes, the activity being engaged in, and the past history of the group in determining the appropriateness of any absence. Had this occurred in a physical education class or involved a younger student/athlete, the outcome may have been much different. Prudent practice demands that every effort be made by teachers to maintain a physical presence in those activities to which they are assigned.

Summers v. Milwaukie Union High School District No. 5

481 P. 2d 369

Issue: Improper supervision—Failure to furnish doctor with list of exercises performed in class

Level of Court:	State Court of Appeals
Date/State:	1971/Oregon
Decision:	Plaintiff/Affirmed

The plaintiff was injured while performing a springboard exercise in her physical education class. The evidence showed that, as a freshman, the plaintiff was excused from all physical education for the last half of the year by a doctor's note because of a back condition. During her sophomore year, pursuant to a doctor's note, she was excused from doing sit-ups due to a back disability. The doctor's excuses were part of the permanent records on the plaintiff maintained by the district.

After the plaintiff complained of back pain during November and December of her junior year, her mother asked the doctor for advice. The doctor requested a list of the exercises the plaintiff was required to perform during physical education. The mother relayed this request to the counselor at school on at least four separate occasions.

On the day of the accident, the plaintiff was required to do a springboard exercise requiring her to jump from the springboard, touch her toes in the air, and land on her feet. While performing the exercise, the plaintiff lost her balance upon landing, fell backwards and suffered a compression fracture of two vertebrae. The plaintiff's doctor testified that

she should not have been doing the springboard exercise and that he would have recommended that she not participate in that exercise had he known she was doing so.

There was no dispute that the girl was required to perform the exercise or that the girl had a previous infirm back condition. The district argued that there was no evidence indicating they knew that the previous back condition created a hazard of injury to the plaintiff. In upholding the trial court judgment for the plaintiff, the court of appeals held that, had it not been for the district's failure to furnish the requested list of exercises, the district would have been advised of the hazard by the doctor. The court ruled that "a person is bound not only by what he knows but also by what he might have known through the exercise of ordinary diligence." The court held that the injury to the plaintiff resulting from the springboard exercise was, under all the circumstances, reasonably foreseeable.

NOTE: This case sounds an obvious warning about communication. Although in this case the school district failed to communicate the parent request to the physical educator, teachers and coaches need to take reasonable steps to become informed about the health status of students and athletes in their charge. It could be a mistake for a teacher or a coach to wait for a school nurse or health clerk to notify them of conditions noted in the student's health file. Teachers and coaches need to take the initiative by submitting class and team lists to the school health personnel so that the health records of those students can be quickly reviewed for conditions that have implications for their participation. In some cases, physical educators and coaches may have to accept responsibility for going through the student health folders themselves.

Physical educators can also develop medical history and information forms allowing parents to note any medical information or limitations that might have any bearing on their child's participation in the physical education program. These forms should be kept on file in the physical education office. In the event of some limitation being noted on a student health record, and where an injury occurs as a result of that student's or athlete's participation in a restricted activity, the court may be somewhat unsympathetic to a district argument that they were unaware of any limitation.

Henrich v. Libertyville High School
712 N.E. 2d 298

Issue: Failure to abide by medical restriction on activity—
Willful and wanton misconduct

Level of Court: State Supreme Court
Date/State: 1998/Illinois
Decision: Defendant/Affirmed

The plaintiff had undergone spine fusion surgery for a low back medical condition. The plaintiff was provided with a letter from his physician advising him that he was permanently restricted from participating in contact sports such as wrestling and football in his physical education class. Trial evidence showed that the district had received a copy of the letter and had actual knowledge of the restrictions on the plaintiff's activity.

The year following surgery, the plaintiff was directed to participate in a game of water basketball during his physical education class. At the time of the accident, the class was under the supervision of a substitute teacher. As a result of his participation, the plaintiff suffered a severe and permanent injury. The plaintiff charged that the district was willful and wanton in their supervision in that they required him to participate in a contact activity during physical education when they were well aware of the medical restrictions on his activity. He further alleged that the district was negligent in allowing another student, who they knew was particularly rough, to play in the game with the plaintiff. The plaintiff also charged the district with negligence in assigning a noncertified or inadequately trained substitute teacher to the physical education class.

Suit was also filed against the other student. The other student filed a counterclaim against the district, seeking contribution for their negligence.

The district moved for a dismissal of the case while claiming it was immune under the Illinois Tort Claims Act. The plaintiff countered that under the School Code, the district could be held liable for willful and wanton misconduct. The trial court granted the district motion for dismissal, and both plaintiffs appealed.

The appellate court held that the School Code and the Tort Claims Act must be reviewed independent of one another. The school code clearly allowed school districts to be held liable for willful and wanton misconduct in their supervision of students. The tort claims act specifically stated that neither a public entity nor a public employee is liable for injury caused by a failure to supervise an activity on public property. The plaintiff argued that the School Code should control and listed a number of cases in which the courts had held districts liable for

their willful and wanton misconduct. The district argued that the Tort Claims Act should control.

The appellate court agreed with the district that the language of the Tort Claims Act was clear and unambiguous and that it was controlling in this case. The court noted that in all of the cases cited as precedent by the plaintiff, defendant school districts did not draw upon the Tort Claims Statute for their defense but rather relied on the school code. Because the district in this case relied solely on the conditions embodied within the Tort Claims Act, the court ruled that the summary judgment for dismissal by the trial court was proper. The court ruled that because the district was immune to suit, the counterclaim by the second plaintiff for contributory relief was void. The suit by the injured plaintiff against the other student was left standing.

The supreme court granted the injured plaintiff's petition for review. The issue before the court centered on the controversy between two immunity statutes. The school code did not immunize the school district against willful and wanton misconduct whereas the tort immunity act did. The court ruled that in order to resolve the issue, it must interpret both statutes in an attempt to ascertain the legislature's intent. The supreme court affirmed the appellate court decision while ruling that the Tort Immunity Act was controlling.

NOTE: Although this case was decided on the basis of governmental immunity, it raises important and difficult issues for physical educators and the school districts that employ them. Not much doubt exists as to whether or not liability would have been assigned in this case if it had been tried in a jurisdiction not covered by governmental immunity.

It is crucial that physical educators, as well as coaches, be aware of the health status of the students under their care. In cases such as this, it requires developing a system by which pertinent medical information can be routinely shared with teachers and coaches. Development of a "Student Health Concerns" list by the school nurse or the district health services staff is an important step in the communication process. Physical educators and coaches should also consider a student medical concerns form designed specifically for their classes.

The class in this case was under the care of a substitute teacher on the day of the accident. Physical educators would be prudent in alerting substitutes to students who have special medical concerns as well as potentially disruptive students. This can easily be accomplished through the lesson plan left for the substitute. Failure to alert substitute teachers to these concerns leaves them operating blind.

Evans v. Oaks Mission Public School
945 P. 2d 492

Issue: Failure to abide by medical restrictions

Level of Court: State Supreme Court
Date/State: 1997/Oklahoma
Decision: Defendant/Reversed/Vacated and dismissed

The plaintiff suffered a shoulder separation in the fall of his sophomore football season. He returned in time to play in the final game of the season. He played basketball for his school during the winter and baseball in the spring. During the baseball season, he injured the shoulder again while playing in a pickup basketball game.

At the direction of his parents, after receiving medical advice, the plaintiff was to sit out his junior year and not play any sports. Initially, the plaintiff was not enrolled in any physical education classes during the beginning of his junior year. After a few weeks, however, he changed his schedule, dropping another class in order to take a physical education class. The physical education class was taught by the football coach and emphasized football-related skills. The class lifted weights four days per week and spent the fifth day in competitive sports activities.

While wrestling in this physical education class, the plaintiff dislocated his shoulder. The plaintiff brought suit, charging the district with negligence and gross negligence in their supervision. It was argued that the plaintiff's mother had discussed the doctor's warning with the coaches and that a note restricting him from engaging in any kind of sports activity was filed with the school. The district filed for a summary judgment to dismiss based on claims of governmental immunity. The district argued that the plaintiff voluntarily changed his schedule with the full knowledge of his parents and enrolled in the physical education class.

The trial court dismissed the complaint against all of the coaches as well as the school district. On the plaintiff's appeal, the court of appeals reversed the summary judgment for the school district, ruling that the district was not protected by governmental immunity. The supreme court vacated the court of appeals ruling and reinstated the trial court dismissal.

The supreme court held that the Oklahoma Governmental Tort Claims Act exempted school districts from liability for any injuries resulting from participation in or practice for any interscholastic or other athletic contest sponsored or conducted by or on the property of the school district. In citing its previous decision in Curtis v. Board of Education of Sayre Public Schools, 914 P. 2d 656, the supreme court ruled that competition or participation in competitive sports within a physical education class met the definition of "other athletic contest" contained within the tort claims act.

NOTE: Again, in any jurisdiction not cloaked in governmental immunity, the decision could have easily gone the other way. Any time a student or athlete is restricted or removed from participation by doctor's note, he or she should only be allowed to return to full participation with written permission from the doctor. Prudent practice dictates that teachers and coaches not rely on student or parent consent once a specific restriction from a doctor is filed with the school.

Limerick v. Euclid Board of Education
591 N.E. 2d 1299

Issue: Allowing student to participate in football practice without obtaining proof of medical insurance—Negligent supervision

Level of Court:	Court of Appeals
Date/State:	1990/Ohio
Decision:	Defendant/Affirmed

The plaintiff, a member of his high school football team, received injuries as a result of being tackled during a regularly scheduled team practice. Trial evidence indicated that the plaintiff's mother signed a number of forms prior to the start of the season, including a form authorizing participation, a school drug and alcohol form, and an emergency treatment authorization form. The school also had a form requiring all team members to have accident insurance coverage prior to participation in practice or games. This form was never signed before the plaintiff began practicing or before he received his injuries.

The plaintiff alleged the district was negligent in its supervision of the football program by allowing him to practice without accident insurance coverage. It was alleged that this negligence caused the plaintiff's injuries, namely, the incurring of medical expenses.

The trial court granted summary judgment for the school district, and the plaintiff appealed. The court of appeals upheld the summary judgment dismissing the case while holding that the school district had no legal duty to obtain a signed medical insurance coverage form from the mother. The court ruled that the plaintiff's case therefore failed to meet the five-part test for negligence.

NOTE: Although the district received a favorable ruling in this case, program administrators would be prudent to enforce all established school district rules, guidelines, and procedures. State legislatures direct school districts to establish reasonable rules for the conduct of school programs. If a school district enacts a school board policy requiring proof of medical coverage for participants prior to participation in athletic programs, it could be argued that the board policy constitutes legal duty

as a matter of law. Absent a board policy requiring proof of medical coverage, such a practice still constitutes good policy. Agreement to participate forms, waivers and releases, and proof of insurance forms all help with establishing some degree of assumption of risk or comparative negligence and serve to somewhat discourage litigation by injured parties.

Silver v. Levittown Union Free School District
692 N.Y.S. 2d 886

Issue: Negligent transmission of a communicable disease

Level of Court: Supreme Court, Nassau County
Date/State: 1999/New York
Decision: Plaintiff/Affirmed

The plaintiff, a member of his high school wrestling team, was directed by his coach to wrestle a former teammate, who had graduated, during a practice session. The plaintiff alleged that the former teammate suffered from the highly contagious herpes simplex virus and had sores, blisters, and rashes on his head and face. As a result of the close physical contact during the practice match, the plaintiff contracted the herpes simplex virus. Suit was brought against both the former teammate and the school district, alleging negligent transmission of a communicable disease. The plaintiff charged that the defendants recklessly and/or intentionally failed to inform the plaintiff of the contagious condition of the former teammate.

The defendants filed a motion to have the action dismissed, arguing that the plaintiff failed to state a proper cause for action. The defendants argued that the state made no provision for bringing suit for negligent transmission of a disease through casual contact.

The court denied the motion to dismiss. The court ruled that the wrestling match did not constitute mere casual contact. The court noted its history of granting a cause of action for both intentional and negligent transmission of a sexually transmitted disease. The court ruled that it is the degree of contact, not the nature of the contact, that creates the duty to disclose. The court found that the degree of contact involved in wrestling was far greater than casual contact and that, due to the degree of contact required, it was reasonable to impose a duty to disclose the existence of a highly communicable disease.

NOTE: This case has a number of implications for both the supervision and the care of equipment and facilities by physical educators and coaches. It is imperative that physical educators and coaches be aware of the health status of participants for both the safety of the participant as well as the safety of others, as was made evident in this case. It is critical

that physical education and athletic departments develop policies relative to the participation of those with communicable diseases as well as the care and protection of equipment and facilities to prevent the spread of possible communicable diseases.

Whereas great attention has been given to blood-borne pathogens, and policies have been developed to prevent self-contamination and spread of these diseases through contact with blood and body fluids following injury to participants, less attention has been given to the prevention of diseases such as the one in this case and others such as head lice, foot fungus, and staph infection. Physical education and athletic programs offer many opportunities for contact that could be deemed more than casual. Policies must be developed to address the potential for the spread of these diseases.

Wrestling mats must be properly cleaned and disinfected prior to each use. In units such as in-line skating, procedures should be developed and implemented for the cleansing of safety equipment with disinfectant after *each* use. This should include the helmet as well as knee, wrist, and elbow guards. Skates should be disinfected after each use as well. With the rapid inclusion of artificial rock climbing walls in school facilities, attention must be given to both the need to disinfect climbing shoes after each use as well as cleaning of the climbing wall surface in the event of falls causing skin abrasions. Many programs use technology such as heart rate monitors that should be disinfected or cleaned with a mild cleaner after each use. The use of loaner gym clothes raises issues that need to be addressed. The cost of prevention in each of these areas is minimal and should be addressed within the established departmental policies.

Zalkin v. American Learning Systems, Inc.

639 So.2d 1020

Issue: Supervision and assumption of risk—Playing football while injured

Level of Court:	District Court of Appeals
Date/State:	1994/Florida
Decision:	Defendant/Reversed and remanded for new trial

The plaintiff injured his shoulder during the last regulation game of the season. After informing his coach of the injury, he was advised by the coach to seek medical attention and had his weight lifting and practice limited by the coach. Ten days after the initial injury, the coach placed the plaintiff in a round-robin football game in which the plaintiff further injured his shoulder.

The plaintiff filed suit, charging the district with negligent supervision in having him play while injured. The trial court held that the plaintiff "knew the danger, appreciated the possibility of injury, and

deliberately exposed himself to the danger" and therefore had expressly assumed the risk of participation. The jury was instructed that express assumption of risk was an absolute bar to recovery. The trial court entered judgment for the defendant.

On appeal, the trial court decision was reversed and the case remanded for a new trial. The court of appeals ruled that express assumption of risk in contact sports protects other players from liability for injuries resulting from contact inherent to the game of football. The court held that express assumption of risk is not a bar to an action for negligent supervision. The court went on to rule that the plaintiff did not expressly assume the risk of negligent supervision and, therefore, his claim should be evaluated by a jury under the principles of implied assumption of risk as integrated into comparative negligence.

NOTE: Caution must always be given to returning players to play following significant injury. If a player has his or her participation eliminated or curtailed by a physician, the player should receive medical clearance before returning. Although there was no indication in this case that the plaintiff sought medical attention, he had nonetheless made the coach aware of his shoulder injury. Coaches are cautioned to make sure athletes are significantly recovered before allowing them to return. On retrial, although likely the plaintiff would be held responsible for his decision to play, it is also possible that the coach would be held accountable to some degree for the early return to play that resulted in further injury to the plaintiff. Using comparative negligence principles, damages would be apportioned according to the degree of fault of both parties.

Childress v. Madison County

777 S.W. 2d 1

Issue: Supervision and liability release—
Mentally retarded student in swimming

Level of Court:	Court of Appeals
Date/State:	1989/Tennessee
Decision:	Defendant/Affirmed in part, reversed in part, and remanded

The plaintiff, a 20-year-old severely retarded student, traveled with his high school class to the YMCA to train for the Special Olympics. He was supervised on this trip by a teacher and an aide who were employees of the county and also by a YMCA lifeguard. The plaintiff's event consisted of walking the width of the shallow end of the pool and handing a floating ball to an attendant. The teacher was at the shallow end, the aide was at the other end, and the lifeguard was in and out of the pool while giving instructions. On the day of the accident, the teacher had finished

working with the plaintiff and instructed him, as well as all of the other students, to get out of the pool. As the students were exiting the pool, another student, who was a swimmer, jumped in to swim a lap. The teacher walked along the edge as he swam to the deep end.

The next time the plaintiff was seen, he was lying on the floor of the pool where it slopes from the shallow end to the deep end. He was pulled from the pool and revived by the lifeguard. As a result of the accident, the plaintiff sustained injuries and incurred medical expenses. The case was tried before the court without a jury. The court ruled the evidence did not weigh in favor of the plaintiff and held for the defendants.

On appeal, the court of appeals ruled that the evidence preponderated against a finding of no negligence. The court held that the teacher and the aide were responsible for supervision. The court took note of evidence indicating the teacher ordered students out of the pool but did not actually see the plaintiff exit. The court also took notice that the teacher became involved in observing another student, did not know whether the plaintiff left the pool, and did not know whether anyone else was watching the plaintiff when she left him. The court found that each of the attendants was involved in small group instruction and no one had responsibility for general supervision of the entire group. The court held that general supervision could have prevented the accident.

The defendants raised the fact that the mother had signed a liability release removing all liability from the defendants. The court ruled that the release was valid as far as the mother's claims were concerned but that the mother could not execute a valid release or exculpatory clause on behalf of her son. The court, in ruling the release invalid, held that guardians may not waive the rights of their children or those of incompetents.

It was also recognized that releases are contracts and that minors and incompetents cannot legally execute a contract. The court of appeals reversed and remanded the case as it pertains to the boy. The case by the mother individually was dismissed.

Dixon v. Chicago Board of Education
710 N.E. 2d 112

Issue: Swimmer drowns during swim team tryout—No lifeguard at time of drowning

Level of Court:	Court of Appeals
Date/State:	1999/Illinois
Decision:	Defendant/Affirmed

The plaintiff's daughter drowned during tryouts for her high school swim team. At the beginning of the swim team practice, the volunteer lifeguard asked the coach for permission to leave the pool area for a short time. The coach gave permission, saying he had it covered. When the

plaintiff's daughter entered the pool, the coach was 15-20 yards away from her and standing on the pool deck. She began to swim from the shallow end to the deep end. The coach testified he observed the girl's stroke and technique and found that she was swimming well. He then had another swimmer enter the pool. He testified that he scanned down to watch the other swimmer and to check his mechanics. He stated that, based on the rate of speed the girl was moving, he felt she would reach the end of the pool in time for him to observe the other swimmer and then scan back to see her either turning or swimming back down the pool. When he returned his attention to the girl, she had already gone under to the bottom of the pool. The coach testified his attention was diverted from the plaintiff's daughter no more than 10 seconds. Testimony of another swimmer indicated it could have been as long as three or four minutes.

The school district filed for a summary judgment, contending it was immune to suit under the Illinois Tort Claims Act. Illinois statute provides public entity and public employee immunity for injuries due to a failure to supervise activities on any public property. Another section of the act states "where a local public entity or public employee designates a part of public property to be used for the purposes of swimming and establishes and designates by notice posted upon the premises the hours for such use, the entity or public employee is liable only for an injury proximately caused by its failure to provide supervision during the said posted hours."

The trial court granted the district motion for summary judgment and, on appeal, the Appellate Court of Illinois upheld the trial court decision. The appellate court ruled that Illinois law provided absolute immunity for injuries caused by alleged negligent supervision subject to the exception for designated swimming areas as stated above. The court held that the school board had not posted any hours of use for the swimming area and, therefore, the plaintiff could not get beyond the statutory absolute immunity of the school board.

The court went on to state that, although the immunity conferred by statute controlled the outcome of the case, supervision was provided. The court held that the coach was at the pool, supervising the swimming team tryouts. The court stated that a lapse of attention from one swimmer to another did not change the supervisory status of the coach.

NOTE: The real safety issue was best framed by the defendant coach's testimony when he stated, "You try to put out as many safety procedures as you possibly can. But when you actually start to look at one particular student, that's where you're at, you're focusing there." Supervision requires both general as well as specific supervision. The coach in this case was focused on an individual athlete with no one having the responsibility for general supervision of the entire area. In an activity such as swimming, focusing on one athlete or student for any extended

time without someone else assuming responsibility for supervising the entire group can, and in this case did, lead to tragic consequences.

Trotter v. School District 218
733 N.E. 2d 363

Issue: Student drowns in freshman swimming class—
Qualifications of instructor and student volunteers

Level of Court: Court of Appeals
Date/State: 2000/Illinois
Decision: Plaintiff/Reversed in part, affirmed in part

The plaintiff brought a wrongful death action against the school district and swimming instructor on behalf of his son, a 16-year-old freshman, who drowned during a free swim time during his required physical education class. Trial court evidence indicated that the district curriculum director for physical education hired the teacher for the freshman swimming class while knowing that the teacher lacked certification in both water safety and lifeguarding through the American Red Cross. The director believed the teacher was qualified to teach the freshman-level swimming class because he had a physical education teaching certificate, had taken a CPR class, and was motivated.

Trial evidence indicated that the teacher suffered a knee injury in August, before the start of the school year, and required surgery. He was released from the doctor's care and completed physical therapy in October. Evidence also indicated the swimming coach sponsored a student guard club and assigned student guards to the various freshman-level swimming classes. The student guards were not considered lifeguards but an extra set of eyes for the teacher on duty. Two were assigned to the class in which the plaintiff drowned.

Before his drowning, the plaintiff's son had completed exercises in floating and swimming. The teacher found the boy qualified to swim in the deep end of the pool and to use the diving board during free swim. The teacher did, however, give the boy a poor grade for his freestyle swim and noticed that he was fatigued from the swim.

On the day of the accident, the teacher assigned the boys to free swim while he tested the girls. A student in the class alerted the teacher that the plaintiff's son was in trouble. When the teacher turned and looked, he saw the boy floating face down below the surface. The teacher testified he initially thought the boy might be performing a float. After the other student insisted the boy was in trouble, the teacher began to walk toward the deep end. He saw one of the student guards jump into the pool. The student guard testified in her deposition that she attempted to get one of the life buoys or rings but found that they were tangled, so she jumped in

without any device in order to save time. Another student attempted to get one of the shepherd's crooks over to the plaintiff's son, but he was unable to grab it. The student guard was having trouble retrieving the boy so the second student guard jumped in to help. Once the boy was brought to the surface, the teacher, who was still standing on the pool deck, assisted in getting the boy onto the deck and administered CPR.

The plaintiff alleged the district was negligent and willful and wanton in their instruction and supervision of the class. The plaintiff also charged negligence and willful and wanton conduct in delegating important duties to two unqualified minor students rather than having those duties performed by a qualified individual. The plaintiff further asserted claims of negligence and willful and wanton misconduct in failing to provide qualified instructors and for failing to provide adequately trained instructors or other individuals with the degree of skill necessary to respond to emergency situations.

The defendants moved for a summary judgment, claiming that they were immune to suit under the Illinois Tort Immunity Act. The defendants argued that, for all of the plaintiff's allegations not subject to the Tort Immunity Act, the plaintiff failed to present any evidence of willful and wanton conduct as required by the Illinois Education Code. The trial court denied the defendant's motion for summary judgment. The defendant filed a motion for the trial court to reconsider the denial of the summary judgment and moved for a ruling on the defendant's other grounds for summary judgment under the education code. Although it has since been amended, the Tort Immunity Act in place at the time of the accident granted absolute immunity for the supervision of activities on public property. The Education Code, on the other hand, provided immunity for mere negligence but not for willful and wanton conduct. The court again denied the motion for summary judgment while finding that the school district and teacher were not entitled to immunity for willful and wanton supervision of a student.

The appellate court ruled that the pre-amended Tort Immunity Act provided immunity for the alleged willful and wanton conduct of the teacher in supervising the class. The court held that the student volunteers were also entitled to the same immunity and that both the district's provision of an instructor for the class and the instructor's delegation of duties to the student volunteers were discretionary acts entitled to immunity. Although finding that the alleged failure to provide adequately trained instructors to respond to emergency situations was not entitled to discretionary function immunity under the education code, the court determined the defendants were still entitled to immunity under section 3-108 of the Tort Immunity Act for willful and wanton conduct. The court concluded that the submitted evidence regarding the condition and adequacy of the safety equipment at the pool was insufficient to allege willful and wanton misconduct.

NOTE: This case presented a number of important issues decided on the basis of absolute immunity. The reader can easily see how the result could have been much different in a jurisdiction not protected by absolute immunity. Since this tragic accident, Illinois law has been amended to no longer provide immunity for willful and wanton conduct under the Tort Immunity Act. The outcome of this case could be quite different if tried under the amended statute.

Those charged with the hiring of personnel need to insist on proper certification, and supervision of those hired is critical. Instructors need to provide specific as well as general supervision. Teachers of an activity such as swimming who delegate important supervisory responsibilities to unqualified individuals put both the school district and themselves at risk.

Crowell v. School District No. 7 of Gallatin County

805 P. 2d 522

Issue: Supervision and spotting in gymnastics class

Level of Court:	State Supreme Court
Date/State:	1991/Montana
Decision:	Defendant/Reversed and remanded

The plaintiff was injured in her physical education class while performing a gymnastics routine on the rings. Testimony indicated that students were required to perform compulsory exercises on the parallel bars, high bar, rings, balance beam, and vault. The class was divided into several small groups, with each group rotating through the various equipment stations.

On the day of her injury, the plaintiff was attempting a straddle-cut dismount from the rings. The plaintiff failed to generate enough momentum, and, as her legs swung overhead and around the rings, she released and dropped to the floor landing on her shoulders and neck rather than rotating around to her feet. Testimony indicated that the plaintiff was not being directly supervised at the time of the injury. The teacher did not spot the plaintiff through the dismount, and although students were assigned responsibility for spotting one another, no one spotted the plaintiff as she attempted the dismount.

The district filed for summary judgment to dismiss the case, claiming that both the district and the teacher were immune to suit by state statute. The trial court granted the request for summary judgment, and the plaintiff appealed. On appeal, the plaintiff argued that, even if the defendants were immune by statute, that immunity was waived as a result of the district's purchase of liability insurance. The appellate court ruled that, although the district and its employees were immune by statute, that immunity was waived to the extent of their insurance coverage. The case was remanded to the trial court for further proceedings.

NOTE: Although this case centered on immunity and the impact of purchasing liability insurance on that immunity, it nonetheless sounds a clear warning to physical educators. Gymnastics is an activity characterized by more risk than many parts of the physical education curriculum. Therefore, it demands very close attention to the duty of supervision. Care needs to be given, when setting up gymnastics stations in a class situation, to avoid multiple high risk activities. It is essential that proper spotting be provided for all aerial activities such as the one being performed by the plaintiff in this case.

If a physical educator or coach elects to have students spot one another, it is crucial that those student spotters receive careful instruction on proper spotting techniques and that they undergo adequate and well-supervised practice on those spotting techniques. The teacher retains the ultimate responsibility for the supervision of all spotters as well as other class members. Delegating responsibility for spotting to students is an action teachers should undertake very carefully.

It would be prudent for physical educators to carefully plan their gymnastics units to avoid situations where multiple high-risk activities are occurring simultaneously in different areas of the gym. For example, if one station has students performing a routine on the rings with an aerial dismount, the teacher might be wise to plan isolated and more controlled skill work on the remaining pieces of equipment. This would allow closer supervision of the higher risk station. Supervisors need to guard against spreading themselves too thin as well as against careless delegation of their supervisory responsibilities, including spotting, to others. Both the skill level and past experience of participants play an obvious role in making these decisions.

Cody v. Massapequa Union Free School District No. 23

642 N.Y.S. 2d 329

Issue: Improper supervision—Lack of spotting for cheerleader

Level of Court:	Supreme Court, Appellate Division
Date/State:	1996/New York
Decision:	Plaintiff/Affirmed

A 17-year-old cheerleader was injured while participating in a cheerleading event in which two other cheerleaders attempted to lift her up into the air. The plaintiff suffered her injuries when she fell backward to the floor.

The plaintiff had performed the maneuver before with a spotter and asked for a spotter before doing the maneuver on the night of the accident. Due to not having enough cheerleaders available, no spotters were provided.

The district moved for a summary judgment. The plaintiff offered expert testimony in opposition to the summary judgment that indicated spotters should be used on all partner and pyramid stunts. Expert testimony also stated that the plaintiff's injuries would have been prevented if a spotter had been provided as requested. The trial court denied the district motion for summary judgment, and the district appealed.

On appeal, the supreme court ruled that, although the plaintiff was a voluntary participant and therefore assumed the risks that cheerleading posed, she did not assume risks that were unreasonably increased. The court held that there were issues of fact as to whether the teacher in charge failed to provide proper supervision by permitting the plaintiff to execute the maneuver without a spotter and that the issue of fact was one for the jury and not summary judgment.

NOTE: Injuries involving cheerleaders at all levels have increased significantly as the stunts being performed for entertainment have become increasingly sophisticated. At the secondary school level, educators need to be vigilant about the instruction and supervision of cheerleading participants. Proper teaching methodology, including sequencing of skills and keeping activities within the ability level of participants, needs to be carefully planned. Safety instructions become a critical part of the instructional process, especially as aerial stunts and large pyramids are undertaken. Active supervision requires spotting of all difficult stunts, especially aerial ones, not only during the learning process but also in the performance stage when dealing with young participants.

Smith v. Vernon Parish School Board
442 So. 2d 1319

Issue: Supervision—Students violate rules pertaining to use of a trampoline

Level of Court: Court of Appeals
Date/State: 1983/Louisiana
Decision: Defendant/Affirmed

A 15-year-old girl broke an arm and a wrist as a result of a fall on a trampoline during her physical education class. The plaintiff brought suit against the school board, physical education teacher, and the insurer of the teacher, claiming negligent supervision. Evidence showed that the plaintiff's daughter was a straight-A student with four years of instruction in the use of trampolines. On the day of the accident, she and four other girls requested permission to bounce on the trampoline stored on the stage in the gymnasium. The physical education teacher helped the girls open the trampoline, watched them for a couple of minutes, then left the stage to talk to another teacher who was teaching a class in the gym. Testimony showed that, after the physical education teacher left the stage, the girls sent a friend to make sure the teacher could not see them, and then all five girls proceeded to bounce on the trampoline at the same time. After one bounce, all five fell on the bed of the trampoline, and the injury resulted. Testimony was clear that the physical education teacher had a steadfast rule of no more than two people on the trampoline at a time. This rule had been repeated to the class on numerous occasions, and the safety hazard of having more than two on at a time was made clear to all members of the class.

The trial court found the physical education teacher free of negligence and the plaintiff's daughter contributorily negligent in causing her own injuries and, therefore, awarded no damages. The plaintiff appealed the trial court decision to the court of appeals.

The court of appeals reiterated that the duties of teachers required the exercise of reasonable supervision commensurate with the age of the children and the circumstances. The court held that a greater degree of care must be exercised only when requiring students to use inherently dangerous objects or where it can be reasonably foreseen that an injury or accident will occur. The court affirmed the lower court decision. The court ruled the teacher exercised reasonable care and that the "greater degree of care standard" did not apply because the trampoline was not an inherently dangerous object and, had the rules been followed, the activity was not one where it was reasonably foreseeable that an accident might occur. The court stated that the girl, "by a conscious and willful violation of the rules, cannot transform a non-risky event into one in which the accident is reasonably foreseeable." Because of finding no negligence on

the part of the defendants, the court did not discuss or rule on the issue of contributory negligence on behalf of the plaintiff's daughter.

Toller v. Plainfield School District 202
582 N.E. 2d 237

Issue: Failure to properly match competitors in wrestling

Level of Court: Appellate Court, 3rd District
Date/State: 1991/Illinois
Decision: Defendant/Affirmed

The plaintiff, an 83-pound sixth grader, was injured while wrestling a 100-pound classmate during their physical education class. Testimony at the trial court indicated the physical education teacher had instructed the class in the basic fundamentals of wrestling and followed a weekly lesson plan. He had demonstrated some of the wrestling maneuvers, had instructed the class not to use illegal moves such as a body slam, and had divided the class into three groups according to an estimation of "size, height, weight, body structure, and ability." At the time of the accident, the instructor was supervising from the edge of the mat approximately 10 feet away.

During the course of the match, the plaintiff received an arm and shoulder injury when his opponent placed his left foot behind the plaintiff's right foot and pushed him backwards. The plaintiff landed on his left arm and his opponent landed across his chest and left shoulder. After hearing the plaintiff screaming in pain, the instructor immediately applied ice and summoned office help.

The plaintiff alleged that the instructor was well aware of the weight classifications used in wrestling and that he chose to disregard them, and that, by doing so, he improperly and negligently matched the plaintiff and a classmate for competition. Illinois statute provides governmental immunity to school districts and their employees except in cases of willful and wanton misconduct. The trial court granted summary judgment for the defendant.

On appeal, the appellate court upheld the summary judgment. The court held that the instructor had adequately planned for and instructed the class on fundamentals. The court noted the teacher had provided warnings against illegal moves, had provided some demonstration of skills, had made an effort to divide the class by both size and ability, had provided supervision, and had administered first aid when required. The court clearly found the teacher's behavior not to be willful and wanton conduct, which requires a conscious disregard for the safety and well-being of students.

NOTE: Had this case taken place in a jurisdiction not covered by governmental immunity, the question of ordinary negligence would have been one for the jury. Although it is clear that the teacher in this case knowingly deviated from weight classifications used in the extracurricular program, it is also clear that he did a whole lot right. The importance of written daily lesson plans as well as unit plans, skill instructions accompanied by demonstrations, safety warnings, attention to size and individual skill differences, and active supervision cannot be overemphasized. Despite not strictly adhering to the established weight classifications for competitive wrestling, the instructor in this class established substantial credibility as a reasonable and prudent physical educator.

Benitez v. New York City Board of Education and the City of New York

543 N.Y.S. 2d 29

Issue: Playing in mismatched game in fatigued condition

Level of Court:	Court of Appeals of New York
Date/State:	1988/New York
Decision:	Plaintiff/Affirmed/Reversed and dismissed

The plaintiff, a 19-year-old high school football player, received serious injuries as a result of blocking an opposing lineman on a kickoff. Testimony at the trial court indicated that, after the 1982 season, the principal of the plaintiff's school had requested the league to drop the school team to a lower division, citing the school's poor record and its string of injuries. The league denied the request, and the principal appealed.

On appeal, the principal argued that the school's continuance in the same division was unsafe. The appeal was denied, and the principal went to the Chancellor's representative with yet another appeal. Again, the injury factor was cited, and the principal stated that, unless the team was placed in the B Division, the school might suffer an "additional string of serious injuries to our players." A follow-up letter by the principal argued that the team was being asked to continue in the A Division another year and suffer inevitable injures against much stronger teams. The principal's appeal was again denied. After the decision was made to play the 1983 schedule, the coach stated to the new principal that the upcoming game with JFK High School should not be played and that there was a very high risk of injury. The game was played, and the plaintiff received his serious injuries in an accident one minute before the end of the half.

Evidence presented at trial indicated that the plaintiff played both offense and defense and was involved in all but 9 of the 56 plays prior to the injury. The coach testified that the plaintiff played virtually the whole game because he had no replacement for him other than a 110-pound boy

who was physically incapable of playing at that level of competition. Expert testimony claimed that a mismatch, or playing while tired, increased the risk for injury. Expert medical witnesses for the defense conceded that playing while tired would affect the coordination level of a player. The defendants claimed that the plaintiff was a highly skilled athlete who voluntarily participated, did not complain of being tired, and, therefore, assumed the risk of injury inherent to the game of football.

The Supreme Court, Appellate Division, upheld the 1.25 million dollar judgment of the trial court in favor of the plaintiff. In so ruling, the court held that the defendants "unreasonably increased the risk of the plaintiff being injured by playing him in a game between mismatched teams and by playing him virtually the entire game while he was tired." Although recognizing that the plaintiff was a voluntary participant, the court held that a degree of indirect compulsion existed. The court based this holding on the plaintiff's fear of the negative impact any refusal to play would have on his standing on the team as well as the impact on the numerous colleges that were actively recruiting him. The plaintiff was held to be 30% negligent, and the school board was held to 70%. The award of damages was adjusted accordingly.

The Court of Appeals of New York reversed the lower court decision and dismissed the complaint. The Court of Appeals held as follows:

1. The trial court erroneously instructed the jury that a school owes a student voluntarily competing in interscholastic sports the more protective duty and standard of care of a reasonable parent. The Court of Appeals stated that, in the context of voluntary participation in sports, the required standard is the less demanding ordinary reasonable care standard against unassumed risks.
2. Voluntary participants in interscholastic athletics assume the risks inherent to the activity, provided they are not concealed or unreasonably increased. Fatigue and injuries are both inherent risks to the game of football and, therefore, the plaintiff failed to show a causal relation between a negligent act and the injury.
3. The plaintiff failed to show any existence of compulsion. He testified he was "participating voluntarily, that he did not inform his coach of his fatigue, and that he was playing without complaint under the same conditions he had for the previous one and one-half seasons."

The court ruled that the injury was a "luckless accident arising from the vigorous voluntary participation in competitive interscholastic athletics."

Llaiche v. Kohen

621 So. 2d 1162

Issue: Mismatch—110 lb. elementary student suffers broken leg when tackled by 270 lb. elementary student in football game

Level of Court:	Court of Appeals
Date/State:	1993/Louisiana
Decision:	Defendant/Affirmed

The plaintiff, an eighth-grade student, suffered a fractured leg during a football game between two elementary school teams. The plaintiff was tackled by two defenders as he approached the end zone. He fumbled the ball he was carrying, and it became lodged underneath one of his legs. A third player from the opposing team, a 270-pound eighth grader, fell across his legs.

The plaintiff charged the football coaches and school with negligence in allowing and/or requiring smaller students to scrimmage against disproportionately larger students and in failing to develop, adopt, and implement rules that would prevent larger players, such as the one in this case, from participating against much smaller players.

The defendants moved for a summary judgment. They argued they had no duty to prevent a player from getting hurt in a regular, supervised, officiated interschool football game as a result of a tackle that was not unsportsmanlike but that was an inherent risk to the game. They also argued that they had no authority to develop, adopt, and implement rules keeping larger players out of the program.

The trial court issued summary judgment for the defendant, and the plaintiff appealed. The court of appeals upheld the lower court finding.

NOTE: Those who oversee leagues and who are charged with the responsibility for the formulation of league rules would be wise to take note. Although the court was correct in not holding the coaches responsible for the adoption and implementation of league rules in this case, the outcome could have been different had the suit been filed against those who did have the responsibility. Whereas big mismatches can occur at the high school level and above, it is important to develop safeguards for younger athletes who do not have the physical maturity and strength of older players. Many youth leagues have put weight limits for participation in sports such as football and wrestling where big weight differences pose a risk.

Waechter v. School District No. 14-030

733 F. Supp. 1005

Issue: Exercise as punishment

Level of Court: U.S. District Court
Date/State: 1991/Michigan
Decision: Plaintiff

The plaintiff's son, a 13-year-old special education student, was ordered by his fifth-grade teacher to run what was referred to as the "gut run" as punishment for talking in line at recess. The gut run was a 350-yard sprint that the teacher commonly used for discipline purposes. Students assigned the gut run were required to complete it in less than two minutes.

Evidence indicated that the plaintiff's son was born with a congenital heart defect and had also contracted meningitis as an infant, which left him with both mental and physical disabilities, including legs of unequal length. He was required to wear a leg brace on one leg to stabilize ankle movement and was under doctors' orders not to participate in competitive contact sports or forced exertion. The student's medical history, including limitations on activity, was made known to the defendants. As a result of his required participation in the gut run, the plaintiff's son suffered cardiac arrhythmia and died.

The plaintiffs brought action in federal court against the school district, board of education, superintendent, principal, and teacher. In their complaint, the plaintiffs alleged that the defendants violated their son's constitutional right to substantive due process and procedural due process under the 14th amendment, as well as his rights under the Federal Rehabilitative Act of 1973 as it relates to discrimination on the basis of handicap. They also alleged wrongful death under the Michigan wrongful death statute.

The school district filed a motion to have the case dismissed. The U.S. District Court ruled that the complaint stated a proper claim for violation of substantive due process, under the 14th amendment of the U.S. Constitution, which provides that no state can deprive any individual of life, liberty, or property without due process of law. The court dismissed the allegations related to procedural due process while noting that Michigan law allows civil procedure to address alleged excessive or unjustified punishment. The federal court dismissed the charges alleging violation of the Rehabilitation Act and declined to accept jurisdiction over the wrongful death claim because it involved questions of law unique to Michigan regarding immunity and other defenses to liability.

NOTE: In another punishment case, Jackson v. Wooster Board of Education, 504 N.E. 2d 1144 (Ohio, 1985), a student was ordered to do 25 push-ups, nude, on the locker room floor as punishment for taking two

towels after showering instead of one. He was ridiculed by the teacher as he performed the punishment in full view of the class. In this case the student sued, charging intentional infliction of emotional harm.

The use of exercise as punishment by those in the physical education and sport profession, as well as by those outside the profession, continues as a problem. Using exercise as punishment is an outdated and risky strategy. It is pedagogically weak and counterproductive to the goals of physical education and sport programs striving to teach students and athletes that exercise is a healthy and enjoyable activity and a means to a desired goal of personal fitness and wellness. Prescriptions of exercise for the purpose of punishment increase the susceptibility of physical educators and coaches to lawsuits because such prescriptions are often quite large, often carried out with little or no supervision, and have the potential to make the student the object of ridicule.

As states continue to revise statutes relative to corporal punishment, exercise as punishment has received some attention. Both California and Oregon have enacted legislation prohibiting corporal punishment and have included exercise as punishment within the definition of corporal punishment, thereby making its use illegal.

Metzger v. Osbeck
841 F. 2d 518

Issue: Excessive force in corporal punishment

Level of Court:	U.S. Court of Appeals, Third Circuit
Date/State:	1988/Pennsylvania
Decision:	Defendant/Reversed and remanded in part and affirmed in part

The plaintiff filed a civil rights action under the 5th and 14th amendments of the U.S. Constitution as a result of injuries received when disciplined by his physical education teacher. Evidence submitted at trial alleged that the plaintiff was failing his swimming class because of his failure to participate. On the day of the accident, the last day of the grading period, the class was engaged in a recreational swim. The plaintiff had a note excusing him from class due to illness and a swollen leg. He was on the pool deck during class, trading baseball cards with several other members of the class. The teacher was talking to a student several feet away when he heard the plaintiff using inappropriate language in his conversation with a female student. The teacher walked up behind the plaintiff and placed his arms around the neck and shoulder area and asked the boy if he was the one using foul language. While reprimanding him for the inappropriate language, the teacher's arm moved upward from the boy's Adam's apple to under his chin, which caused the plaintiff to stand on his toes. When the teacher released the plaintiff, he fell face down onto

the pool deck, having lost consciousness at some point. As a result of the incident, the plaintiff suffered a broken nose, fractured teeth, and other injuries requiring hospitalization.

The trial court granted summary judgment to all defendants. It ruled that there were no due process violations and that the evidence would not allow a jury to infer that the teacher intended to injure the student or that he acted in reckless disregard of a risk of which he should have been aware. The summary judgment for the district and board of education was granted because there was no school policy authorizing the teacher's conduct and, therefore, no legal or factual basis for vicarious liability.

The U.S. Court of Appeals upheld the summary judgment for the district and school board but reversed the judgment for the teacher and remanded that portion of the case for further proceedings. The court ruled that "a decision to discipline a student, if accomplished through excessive force and appreciable physical pain, may constitute an invasion of the child's 5th Amendment liberty interest in his personal security and a violation of substantive due process prohibited by the 14th Amendment."

The court held that even if physical discipline is pedagogically appropriate and condoned by district policy, a jury could find that the force used by the teacher exceeded what was needed. The court held that if it could be shown that the teacher intended to cause harm, the teacher "would be subject to liability for crossing the constitutional line separating a common law tort from a deprivation of substantive due process." The court concluded that the summary judgment granted by the lower court could not be permitted to stand where "a defendant who by an intentional act may have caused serious harm, just because [the defendant] claims he did not intend the harm."

NOTE: Physical contact in disciplining students should only occur when it is necessary for the physical safety of other students or the teacher. Even in those cases, the physical force applied should only be what is reasonably required to maintain safety and order. Physical force applied against students in any other circumstances is likely to leave the teachers' or coaches' actions open to close scrutiny by the courts.

Campbell v. Montgomery City Board of Education
533 A. 2d 9

Issue: Lack of supervision—Girl sexually assaulted in boys' locker room

Level of Court:	Court of Special Appeals
Date/State:	1987/Maryland
Decision:	Defendant/Vacated in part, reversed and remanded in part

The plaintiff, a 13-year-old girl, was sexually assaulted after entering a boys' locker room during her physical education class period. Trial court evidence established that the plaintiff was excused from participating in class due to a broken finger. She was in the gym when class began but left the class and went outside to the playing field, where the boys' physical education teacher ordered her to go back to her class. She returned to the building and entered the boys' locker room, something she admitted to having done on four other occasions. After entering the locker room on the day of the incident, the plaintiff heard someone coming. She went into an old shower area, which was off-limits to students, and squeezed her way into a small space between the lockers and the edge of the wall. She was followed by a male student.

The plaintiff and the male student were kissing when another male student entered the area. The second student pulled the girl onto his lap and began molesting her. As the plaintiff screamed, a group of about 15 students entered the area, and a number of them also began to molest her. A few minutes later a second wave of students, 10-15 in number, joined in the assault. At this time, part of the first group departed. Evidence indicated the plaintiff screamed several times while the boys attempted to cover her mouth. During the assault, the boys' teacher was still on the playing field.

When the teacher finally entered the locker room, he heard some noise coming from the restricted area and yelled for whomever was back there to get out. He then saw four or five students squeeze out of the area, then listened for a few seconds and warned that there better not be anyone else in there. He did not question those who exited about what they were doing. When the bell rang, the teacher watched the boys exit and then went to the office on an errand. On his way back to the locker room, a student told him that there was a girl in the boys' locker room. By the time he got there, the plaintiff had left and gone to the gym, where a substitute noticed her appearance and asked what had happened. The plaintiff said she had hurt her foot, and the substitute, not satisfied with her story, took her to the office. The plaintiff was suspended for five days for entering the boys' locker room.

The plaintiff brought suit while charging negligence on the part of the teacher and school district for inadequate supervision. Suit was also filed

against six students. The jury returned a verdict for the plaintiff and awarded the girl and her mother nearly $309,000 in damages. The trial judge set aside the verdict against both the district and the teacher while allowing a $10,000 judgment against one of the students to stand. In doing so, the trial judge held that the girl was both contributorily negligent and assumed the risk of harm when she entered the boys' locker room. The judge supported his ruling on the basis that the girl was intelligent, had engaged in voluntary sex previously, and had been raped previously. The judge ruled that based on her experience, she should have foreseen the risk to which she was exposing herself. Contributory negligence and assumption of risk both served as bars to recovery under Maryland tort law at the time.

The court of appeals vacated the lower court decision and re-entered the judgment for the plaintiff. The court held that the questions of contributory negligence and assumption of risk are normally one for the jury and not the court. The appellate court stated that, because the plaintiff had entered the locker room on previous occasions without incident, it was reasonable to assume that she did not foresee the risk of sexual assault by doing so. The court held that the plaintiff could not be held to be contributorily negligent or said to have assumed the risk as a matter of law and, therefore, the decision was one for the jury. The court ruled that the liability of the school district and that of the teacher might be limited by the state statute to $100,000. The question of a liability cap and whether it applied to the school board as well as the teacher was remanded back to the trial court for determination.

NOTE: Locker rooms should either be supervised or kept locked because they represent one of the more potentially dangerous rooms in a school facility. If left unattended, they easily lend themselves to horseplay and worse.

Several factors contribute to the danger of the locker room area, including the typically smooth, polished-surface concrete floor. These floors are easy to clean but extremely slick when wet. Locker rooms tend to be somewhat congested when used by classes, and crowding in confined areas tends to foster pushing, shoving, and rough play by students, especially during unstructured time like the dressing period. Within the locker room, several potentially dangerous items can be found, such as the lockers themselves, wire baskets for clothing, laundry carts, towels, benches, trashcans, and sinks, which lend themselves to horseplay.

In addition to the physical dangers provided by locker rooms, they can become a dangerously secluded area when not in use by a physical education class or athletic team. If left open during the day and into the evening hours, as is often the case in secondary schools, access by students as well as nonschool people could become a problem. Physical

assaults, sexual assaults, hazing, and drug trafficking are not uncommon occurrences in our schools. It is certainly foreseeable that activities such as these are more likely to occur in the seclusion offered by areas such as restrooms and locker rooms that are left open and unsupervised.

S.W. v. Spring Lake Park School District No. 16
580 N.W. 2d 19

Issue: Sexual assault by intruder in girls' locker room

Level of Court:	State Supreme Court
Date/State:	1998/Minnesota
Decision:	Plaintiff/Affirmed/Affirmed in part, reversed in part, and remanded

The plaintiff, a 15-year-old student, was sexually assaulted by an intruder after returning to the girls' locker room following a swim test in the school pool. In addition to the high school, the school complex included the school district's elementary school, day care center, Community Services Office, and the Board of Education offices.

Evidence presented to the trial court indicated that the school secretary noticed a neatly dressed man with a box, resembling that used to deliver flowers, whom she assumed to be a delivery man, standing in the entrance to the complex near the swimming pool at 11:40 a.m. She asked if she could help him and received a response of which she could understand nothing other than "thank you." She saw him again around 12:45 p.m. in the same spot, talking to a student. She noticed he still had the box. The high school's water safety instructor was in her office around noon when she saw the same man standing near the girls' locker room. The school custodian saw the man at about the same time but in a different location near the girls' locker room. The custodian responded out loud, "Funny, there is a guy coming out of the girls' locker room." The man responded to the custodian's comment, but the custodian did not understand what he had said. The custodian and the water safety instructor discussed the presence of the man and determined the only way he could have gotten to the place where the custodian saw him, without going by the water safety instructor, was if he had gone through the girls' locker room. They decided he must have gotten lost trying to deliver flowers, and their discussion ended. The plaintiff was raped around 1:00 p.m. after returning to the locker room.

The plaintiff and her parents brought suit, charging that the district negligently failed to provide adequate supervision, protection, and security and failed to enact or enforce appropriate security policies. The school district filed for a summary judgment to dismiss the case. The district claimed it was protected by statutory immunity and that the actions or failure to act on the part of school officials to the presence of the intruder

were protected under official immunity. The district motion was denied. On appeal, the court of appeals affirmed the lower court ruling.

On further appeal, the Minnesota Supreme Court ruled that the conduct challenged by the plaintiff was at an operational level rather than a public policy-making level, and that the school district was therefore not entitled to statutory immunity. In discussing official immunity, the court stated that official immunity protects discretionary actions by individual officials at the operational level rather than at the policy-making level. The court stated however, that the discretion exercised must be more than the performance of a ministerial duty. The court held that the determination of whether the school officials were exercising discretion at the operational level or engaged in a ministerial act could not be made without a review of the duty underlying the challenged conduct. The court held that, although the plaintiff made broad allegations about the district's duty to provide security, the district had no security policy, and therefore the school secretary, water safety instructor, and custodian had no duty based on a security policy.

The plaintiff had argued that, if it were determined that the school officials had no duty under a school district security policy, they had a common law duty to protect her. Although recognizing that there may be a broad general duty of a school district to protect children, the court stated it must examine the precise duty and breach of duty giving rise to the suit when examining the school officials' entitlement to official immunity. The court stated that, without a clear showing of what the duty is, it is impossible to analyze whether the school officials were engaged in the exercise of discretion at the operational level or whether they were performing a ministerial act. The court ordered the case remanded to the trial court to determine whether in Minnesota there was a common law duty to protect school children and, if so, whether that duty specifically relates to the conduct of the school secretary, water safety instructor, and custodian in this case.

NOTE: Although this case hinges on the determination of official immunity, it raises a number of policy considerations for schools as well as physical education departments. Schools would be prudent to establish clear guidelines and policies concerning on-site visitors to school buildings. All visitors should be issued visitor passes, which should be visibly worn. Any nonstudent without a pass should be referred to the office for a pass immediately. Teachers and other staff should ensure that the visitor complies with all such requests. Any loitering should give rise to suspicion.

Once again, this case points out the importance of keeping locker rooms locked during class time and providing supervision for students once they are allowed to return to the locker room after class. Leaving

locker rooms open and accessible while allowing students to come and go individually, as in this case, invites a host of possible problems. Whether a rape, a fight, a drug deal, or harassment, the consequences for an individual student as well as the school district can be tragic.

Chudasama v. Metropolitan Government of Nashville and Davidson County

914 S.W. 2d 922

Issue: Unsupervised girls' locker room

Level of Court:	Court of Appeals
Date/State:	1995/Tennessee
Decision:	Defendant/Affirmed

The plaintiff was injured during a fight in the girls' locker room. Trial evidence indicated that the male teacher had a coed class of 25-30 students and that he commonly let students go to change without asking for permission during the last 15 minutes of class. Evidence indicated that the girls' locker room was located up two flights of stairs from the gym and that, due to its remote location, it was a common gathering area for students skipping other classes.

On the day of the fight, the plaintiff had asked to go 20 minutes early because she had been hit in the stomach by a ball. Another student with whom the plaintiff did not get along was in the locker room when she arrived. Shortly after the plaintiff arrived, several other girls from the plaintiff's physical education class arrived at the locker room. One of these girls ordered the plaintiff and another girl to fight. When they refused, the girl proceeded to beat up on the plaintiff. Other girls allegedly joined in on the beating of the plaintiff. They then threw her into the shower and told her to remain there. Another student informed the teacher of what was happening, and he immediately went to the locker room, where he found the plaintiff bruised, scratched, soaking wet, and crying.

As a result of the incident, the plaintiff suffered not only physical injuries but psychological harm as well. After continuing anxiety, she was hospitalized for psychiatric evaluation. After three weeks, she was released with a diagnosis of post-traumatic stress disorder. She required continued treatment after her release. The attacking students were expelled, and juvenile charges were lodged against several of them.

The plaintiff charged the school district, principal, and physical education teacher with negligent supervision. The trial court dismissed the case against all defendants, and the plaintiff appealed.

The court of appeals upheld the trial court dismissal of the case. In dismissing the case against the teacher, the court held that, even if he were negligent in releasing the girls from class early, the injuries suffered by

the plaintiff were not foreseeable. The court also stated that the teacher had no practical choice in the assignment he was given.

The case was also dismissed against the principal while holding that his decision to not assign both a male and female supervisor for the locker rooms was discretionary and therefore immune to suit. The court ruled that, although the decision to assign only a single male teacher to a mixed gym class may have been unwise, it was not actionable.

NOTE: Physical educators would be prudent to not rely on this case for precedent. Most jurisdictions strongly recognize the duty of schools to provide adequate supervision of its students. Middle school students can be expected to get into mischief if left unsupervised for any length of time. The incident in this case lasted nearly 15 minutes. Recognizing the remote location of the locker room and that it was a known gathering place for students skipping classes should have served as notice for potential problems, including fights or disputes.

When confronted with a staffing or scheduling situation resulting in only one physical educator being available for locker room supervision, schools and staff should explore other alternatives for that supervision. Employing the use of one of the building aides for supervision presents one possibility. Depending on the layout of the locker rooms, propping locker room doors open and positioning a single teacher so as to be able to hear and recognize when problems develop presents another possibility. Assigning student aides who know where to immediately contact the teacher in the event of a problem is yet another. Under all circumstances, clear expectations relative to student behavior in the locker rooms need to be developed, communicated, and consistently enforced. Pretending that unsupervised locker rooms are not a problem is not an option.

Hasenfus v. LaJeunesse
175 F. 3d 68

Issue: Student reprimanded and sent to unsupervised locker room attempts suicide

Level of Court:	U.S. Court of Appeals
Date/State:	1999/Maine
Decision:	Defendant/Affirmed

The plaintiff's daughter, an eighth-grade student, attempted suicide in the locker room after being reprimanded by her physical education teacher on the softball field. Evidence indicated that the girl had been raped a year earlier and underwent the trauma of testifying against her attacker. On the day of her attempted suicide, she was allegedly harassed

by some of her classmates regarding her rape and her decision to testify against her attacker. She became angry and shouted some obscenities and threatened some of those around her. After reprimanding her for her outbursts, the physical education teacher sent her in to the unsupervised locker room. After arriving at the locker room, the plaintiff attempted to hang herself. When classmates found her, they called for emergency help. The plaintiff survived but spent time in a coma and several weeks in the hospital. She was left with permanent impairments as a result of her attempt on her own life.

The parents filed suit in federal district court, alleging that their daughter's substantive due process rights under the U.S. Constitution were violated. The parents charged that the school district failed to take preventative measures to prevent what they described as a suicide epidemic. Evidence indicated that seven other students in the plaintiff's middle school attempted suicide in the three months before her attempt. They charged that the teacher's public reprimand and banishment of their daughter to the unsupervised locker room was not only negligent under tort law but that his actions also violated their daughter's substantive due process rights. Substantive due process under the constitution extends procedural due process to substantive protections against state action depriving an individual of life and liberty. The parents argued that the school had an affirmative duty to protect their daughter as a student entrusted to its care.

The district court dismissed the case, and the plaintiffs appealed. The U.S. Court of Appeals held that the basic due process constraint, where substance and not procedure is involved, is against behavior so extreme that it shocks the conscience and is outrageous, uncivilized, or intolerable. The court ruled that neither the district failure to impose preventative measures in light of the rash of suicide attempts nor the teachers' public discipline and banishment of the girl to the locker room constituted substantive due process violations.

NOTE: This case serves as a reminder of the potentially tragic consequences of harassment in our schools. Dealing with the ongoing harassment of classmates while shouldering mental and emotional stress inflicted by hard life events can often prove to be too much for young people to bear. All school districts, schools, and individual teachers need to have firm, established rules relative to harassment. Harassment demands a no-tolerance policy at all levels!

This case also illustrates, once again, the need to refrain from dismissing students to totally unsupervised locker rooms. It is simply not good policy because a wide array of potential problems can arise. Teachers are also cautioned against sending students who are being disciplined, or those who are angry, anywhere unsupervised.

Marlowe v. Rush-Henrietta Central School District
578 N.Y.S. 2d 872

Issue: Bat thrown by student

Level of Court: Court of Appeals
Date/State: 1991/New York
Decision: Plaintiff/Reversed with dissent

The plaintiff, a 17-year-old high school student, was struck in the face and mouth by a bat while playing in a baseball game. The game, which the plaintiff voluntarily joined during his noon recess, took place during a physical education class. Evidence indicated that the bat was thrown at least 35 feet by another student, that this student had a reputation of throwing the bat, and that school officials did little or nothing to enforce the safety rules of the game or to instruct the offending student in proper conduct. Suit was filed against the student who threw the bat as well as against the school district.

The defendants filed a motion for summary judgment. The motion was denied by the trial court. On appeal, the Supreme Court, Appellate Division, ruled that the plaintiff assumed the risk of being hit by a bat when he joined the game and that no allegation was made that the bat was intentionally thrown. The appellate court concluded that the trial court erred in not granting the summary judgment for the defendants and, therefore, reversed the lower court ruling, thereby dismissing the case.

Two members of the appellate court submitted dissenting opinions. In their dissent, they held that a participant in a sport activity assumes only those risks "known, apparent, or reasonably foreseeable." They further stated that the issue of risk assumption is a factual question to be answered by jury determination. They noted that, in the case at hand, the plaintiff was aware that bats were occasionally thrown in baseball games and that the student defendant had a history of throwing the bat. However, evidence clearly indicated that he had never seen a bat thrown the distance that it was in this case. In their opinion, a question existed as to whether the risk was apparent or reasonably foreseeable. The dissent also made note of the fact that the student defendant admitted that the bat did not slip but that he had, in fact, simply let it go in clear violation of the rules of the game. The dissent concluded a triable issue existed as to whether the student's conduct was reckless or wanton, which would preclude a summary judgment. Finally, the dissent noted that the apparent failure of the school district to adequately enforce the safety rules or to instruct the student defendant in proper conduct presented a jury question as to whether or not the school's actions constituted a breach of their duty of care.

NOTE: Physical educators and coaches would be wise to focus on the dissenting opinion in this case. It is critically important to not only communicate reasonable safety rules and expectations but to consistently enforce them. Any reckless behavior by class or team members needs to be recognized and attended to by the supervisor of the activity. Failure to do so implies approval of the behavior and would certainly open up the question of duty and breach of duty to close examination.

Skinner v. Vacaville Unified School District

43 Cal.Rptr. 2d 384

Issue: Failing to warn teacher of student's past disciplinary record

Level of Court:	Court of Appeals
Date/State:	1995/California
Decision:	Plaintiff/Reversed

A student, injured in an attack by another student in her physical education class, brought suit against both her attacker and the school district. Trial court evidence indicated that the plaintiff was part of a coed volleyball class of nearly 50 students at the beginning of fall term. One teacher was assigned to the class. On the day of the assault, the class was divided into 6-8 teams for volleyball with 6 or 7 players on each team.

Evidence indicated that a freshman boy on the plaintiff's team angered everyone else on his team by not trying. He allegedly played to lose by deliberately hitting the ball the wrong way, deliberately serving the ball out of the court, and by hitting the ball out of teammates' hands. At one point, the plaintiff, who was captain of her squad, told him if he "wasn't going to play right to not play at all." After the first game, while the teacher was collecting scores, the plaintiff bent over to pick up a ball, at which time the boy called her some foul names. When she realized he was talking to her, the plaintiff asked him, "What's wrong with you?" He raised his hands as if to fight and pushed her. She walked up to him and again asked what his problem was. He dared her to push him. She responded by flipping his hat off. Angered, the boy called her a foul name again and challenged her to push him again. The plaintiff responded by touching her finger to his chest and laughing. The boy then slugged her twice on the jaw. The teacher immediately intervened and sent the boy to the office and the girl to emergency care. As a result of the attack, the plaintiff suffered two fractures to her jaw and had to undergo reconstructive surgery.

Evidence indicated that the confrontation escalated rather quickly. During this time, the instructor was stationed 20-30 feet away at center court and was collecting scores. At the time of the actual confrontation, the teacher's view was obstructed by students who had gathered around her to report scores.

The plaintiff alleged that the boy had a history of discipline problems. In addition to problems with truancy, refusal to do work, and defiant, disruptive, and disrespectful behavior during the second semester of his eighth-grade year in the same building, the plaintiff had been suspended twice for fighting and once for pushing and instigating a fight. He had also been involved in a fight the second day of the volleyball class in which this incident took place.

The plaintiff alleged that the district was negligent in not informing the teacher of the past physically aggressive tendencies of the boy. The plaintiff argued that, because of this neglect on the part of the district, the plaintiff's teacher was not given an adequate opportunity to head off trouble by keeping closer supervision over him. The plaintiff based her claim on the Education Code, in which the pertinent section read, "A school district shall inform the teacher of every student who has caused, or who has attempted to cause, serious bodily injury...The district shall provide the information to the teacher based on any written records the district maintains or receives from a law enforcement agency."

The trial court awarded nearly $100,000 in damages. Applying the principles of comparative fault, the court held the district to be 60% liable. The court found the boy 100% liable for his assault and battery. The school district appealed while claiming the evidence did not support the finding of the jury.

The appellate court found that the trial court erred in reading to the jury the relevant portions of the education code without also instructing the jury on the requirements of proximate cause incorporated in the California Governmental Code. Applying the ordinary principles of negligence law, the court ruled that the school administrators had breached their duty of care towards students by failing to warn the physical education teacher of the boy's record of fighting. The court found, however, that the evidence did not contain the necessary support for the jury's finding on causation. The trial court judgment was reversed.

NOTE: This case has implications for administrators and physical educators alike. Teachers must have adequate information on disruptive students to be in a position to reasonably foresee potential harm or trouble related to participation by these students in class. Administrators have a responsibility to communicate this information to their staff. Likewise, substitute teachers must have adequate information to maintain an orderly and safe learning environment in the absence of the regular teacher. Teachers have a professional duty, and in many districts a legal duty imposed by board policy, to leave complete and detailed lesson plans for substitutes when they are absent from duty. Teachers need to inform substitutes of any students,with major disruptive tendencies as well as any

child with special needs. Substitutes, like the regular teacher, need to be in a position to foresee problems rather that just respond to them after they present themselves.

Jackson ex rel. Essien v. Unified School District 259, Sedgwick County

995 P. 2d 844

Issue: Springboard used to dunk basketball in physical education class

Level of Court:	State Supreme Court
Date/State:	2000/Kansas
Decision:	Defendant/Affirmed/Reversed and remanded

The plaintiff was enrolled in a mandatory physical education class. On the day of the plaintiff's accident, one of the students asked the instructor whether they could use a large wooded springboard to catapult the students into the air so that they could dunk basketballs at one of the hoops. After being given permission, some of the students in the class arranged the springboard and began to use it to assist them in dunking the basketballs. While taking his turn, the plaintiff lost control of his body and landed on the floor. As a result of his fall, the plaintiff suffered a compound fracture of both bones in one forearm.

Suit was filed against the school district and teachers, alleging negligence in their supervision of the class. The district claimed it was immune to suit under the Kansas Recreational Use Statute and filed a motion for summary judgment to dismiss. The district motion was granted. On appeal, the plaintiff contended the trial court erred in granting the summary judgment because there were unresolved issues of fact before the court and because the teachers and school district had a "duty" to the students that prevented it from raising immunity as a defense. The court of appeals upheld the trial court summary judgment, and the plaintiff appealed to the Kansas Supreme Court.

The supreme court stated that, under the Kansas Tort Claims Act, governmental liability was the rule and immunity the exception. The court held that, to avoid liability, the governmental entity has the burden of proving that it falls within one of the enumerated exceptions under the act. The district in this case claimed it was entitled to immunity under the recreational use exception. The plaintiff argued that his injury did not occur within the context of recreation but within that of a mandatory physical education class. The plaintiff further argued that the gymnasium did not meet the meaning of public property as defined in the recreational use statute and that it was not an "open area."

The supreme court held that the gym was in fact public property and that it was an open area. The court further ruled that the nature of the activity being engaged in at the time of the accident was of no consequence. It held that the determining factor as to whether the recreational use statute applies is whether or not the school gym was permitted to be used for recreational purposes. The court reversed the summary judgment and remanded the case to the trial court for a determination on this issue.

NOTE: All discussion in this case centered on the application of the Kansas recreational use statute. The supreme court clearly stated in its opinion that, if the gymnasium was permitted to be used for recreational purposes, the recreational use exception to liability would apply. The type of activity being engaged in at the time of the accident was of no consequence, according to the court. This reasoning was consistent with the interpretation of recreational use statues in South Carolina and Illinois, both cited by the court in this case. However, the dissenting opinion, as well as other state courts, recognized that the same property may be used for different purposes at different times and that the nature of the activity at the time of the accident should be a consideration.

All discussion of recreational use exceptions aside, this is an example of an activity that should have never been allowed. Aerial maneuvers employing speed and power require significant body control. This type of body control must be developed through carefully managed instruction and developmental activities. Turning students loose on this type of activity invites sad consequences. Without additional information in the court report, a number of questions come to mind, each with liability implications. These questions include the following:

1. What previous instruction and experience did the students in this class have involving the springboard?
2. Were spotters provided?
3. Was floor matting provided under the basket?
4. Were the backboards padded?
5. What instruction relative to dunking was provided?
6. Was the activity supervised by one of the instructors?
7. Did the activity meet any identifiable objectives of the physical education program?

Cook v. Bennett
288 N.W. 2d 609

Issue: Improper supervision—Allowing students to play a hazardous game

Level of Court: Court of Appeals
Date/State: 1979/Michigan
Decision: Defendant/Affirmed in part, reversed in part

Plaintiffs, on behalf of their son, filed suit against the school principal and classroom teacher for injuries received by their elementary school son in the game "kill" being played during a recess period. The game "kill" consisted of one person having possession of a football while all other participants attempted to gain possession by tackling the person with the ball and wrestling it away.

Testimony indicated the game in question was ultrahazardous yet was allowed to be played on numerous occasions by both the teacher and the principal, who observed it being played but made no attempt to stop it. On the day of the injury, the teacher was on leave of absence and was replaced by a substitute.

The teacher requested and received summary judgment in his favor stating that, due to his absence, he owed no duty to supervise. The court issued summary judgment in favor of the principal as well on the basis of governmental immunity.

On appeal, the court of appeals upheld the summary judgment for the teacher and reversed the judgment for the principal. The appellate court ruled that the trial court erred in assigning governmental immunity to the actions of the principal. The court ruled that the principal's duty to supervise staff and students fell within her ministerial rather than discretionary powers. As a ministerial function, liability of the principal for supervision existed under Michigan law.

NOTE: This case raises a potentially important point for physical educators. The court, in this case, ruled that a teacher owes a duty of reasonable care over students in his or her charge and that this duty is coterminous with the teacher's presence at school, because supervision implies oversight. It could be a mistake to assume that a teacher's absence automatically relieves the teacher of all duty. While certainly true, given the above set of facts, other factual circumstances could make the teacher's duty while absent an arguable point.

The fact that teachers have a professional duty, and in many districts a duty imposed by board policy, to prepare lesson plans for the substitute seems to imply that some duty remains. This duty might conceivably be linked to proper instruction and progressions as well as alerting substitutes to students with particular health problems and those students

with a propensity toward disruption. Substitutes must be able to rely on being in a position to anticipate and foresee potential problems. Without adequate plans left by the regular teacher, this could become impossible in many circumstances.

Caballero v. Catholic Mutual Insurance Co.
718 So. 2d 511

Issue: Negligent supervision—Basketball player assaulted by opposing player after a game

Level of Court: Court of Appeals
Date/State: 1998/Louisiana
Decision: Defendant/Affirmed

The plaintiff, a member of her eighth-grade basketball team, received injuries when intentionally kicked in the knee by a member of the opposing team while leaving the locker room after the conclusion of a game. Trial court evidence indicated that the plaintiff's team had badly beaten the other team, which was described as "lacking in basic basketball skills." The tenor of the game was brought into question, with the plaintiff claiming that the game was extremely rough, with a lot of fouls being committed. The parents of the plaintiff alleged that the game was out of control and should have been stopped by the referees. Suit was brought against the opposing player and her parents as well as the Catholic Church and the St. Francis Xavier School Board. The trial court entered judgment against the father of the girl who kicked the plaintiff but dismissed the complaint against the church and the school board. The plaintiff appealed.

The court of appeals was asked to determine whether the trial court was manifestly wrong in determining that the church and school board were not at fault. Once again, the court noted that the case centered on the tenor of the game and whether it was foreseeable that the plaintiff would be attacked by an opposing player. The court noted that there was significant disagreement regarding the tenor of the game. The plaintiff and her parents contended that the plaintiff and her teammates were cursed and brutalized by the opposing players to such an extent that the game should have been stopped by the referees. Barring stopping the game, the plaintiff and her parents contended that the coach should have escorted team members to their parents after the game and that the opposing coach should have restrained his player from injuring the plaintiff.

The court noted that numerous witnesses, including players and parents from both teams, testified that the game was not abnormally rough and that parents were waiting for their children in the lobby outside of the locker rooms. The defendant church and school board argued that

the game was not abnormally rough, that play should not have been stopped, and that the action of the opposing player was totally unforeseeable.

The court of appeals ruled that there was significant evidence to support the claims of the defendants. It ruled that, based on the presented evidence, the incident was totally unforeseeable and that the church and school board were, therefore, not negligent.

NOTE: This case sounds a warning to coaches that controlling the tenor of a game can play a role in determining the issue of foreseeability. Management of sportsmanship is and should be an important issue for all coaches. In any competition where tempers flare or where emotions are charged, coaches would be prudent to be extra vigilant in their supervision. Where inflamed emotions are an issue between opposing schools, athletic directors should address this issue when assigning supervision and security.

Kersey v. Harbin
591 S.W. 2d 745

Issue: Inadequate supervision—Teacher asked to cover two classes at same time

Level of Court:	Court of Appeals
Date/State:	1979/Missouri
Decision:	Defendant/Reversed and remanded

The plaintiff's son, an eighth grader, became involved in a scuffle during passage from the locker room to the gym. Another student, Steve, stepped on the heels of Daniel's shoes as they headed to the gym. Daniel retaliated by elbowing Steve in the genitals, prompting Steve to pick Daniel up. Daniel subsequently fell or was dropped to the floor. Daniel requested and was given permission to see the nurse. Finding no apparent sign of extreme injury, the nurse permitted Daniel to return to class. When he started to feel worse, Daniel returned to the nurse's office, and his parents were summoned. He was taken to his physician and died shortly after from a massive cerebral hemorrhage resulting from a skull fracture. The plaintiffs brought suit against the school superintendent, principal, physical education teachers, and nurse.

The evidence showed that Daniel's regular teacher was absent the day of the accident due to a workshop. The principal had arranged for the other physical education teacher, who shared the same facility, to cover both classes, which was agreeable to both teachers involved. There were between 20-25 students in each of the two classes. The physical education teacher left in charge departed from his normal routine on the day of the

accident. His normal practice was to stay in the locker room until everybody was dressed in order to prevent horseplay. On the day of the accident, the teacher instructed his class to proceed to the gym after getting dressed but told Daniel's class to remain in the locker room until everyone was dressed. He then proceeded to join his class in the gym. During the time Daniel's class was unsupervised, the scuffle and resulting injury occurred. Evidence indicated that Steve had been in trouble before.

The defendants filed and received a summary judgment from the trial court. The summary judgment was granted on a number of technical grounds as well as the defendants' claims to governmental immunity. The appellate court noted that the rules governing summary judgment against a plaintiff in a tort action state, "In no case shall a summary judgment be rendered on issues trialable by jury...unless the prevailing party is shown by unassailable proof to be entitled thereto as a matter of law." The court of appeals rejected the defendants' claim to immunity and held that the defendants owed a supervisory duty of ordinary care. The court of appeals reversed the trial judgment and remanded the case for trial with at least two questions to be answered by the jury:

1. Did the superintendent, principal, or teachers have actual or constructive knowledge of the quarrelsome and disruptive nature of the student causing the injuries?

2. Given such knowledge, did the defendants take appropriate measures to prevent such injuries by exercising ordinary care and by supervising the students?

NOTE: Although we are not provided with an analysis of or answers to those questions, the factual situation arising in this case should certainly alert school administrators, physical educators, and nurses to a number of policy considerations regarding locker room supervision, the covering of classes for teachers who are absent, and the treatment of head injuries.

Cousins v. Dennis
767 S.W. 2d 296

Issue: Rock thrown by mower

Level of Court:	State Supreme Court
Date/State:	1989/Arkansas
Decision:	Defendant/Affirmed

The plaintiff was injured as a result of being struck in the left eye by a rock thrown by a mower operated by a school district employee. The injury left the plaintiff blind in that eye. Suit was brought against the operator of the mower, the facility and grounds maintenance supervisor,

and the school district. The trial court granted the district's motion for summary judgment on the grounds of governmental immunity and also ruled the district was not required to carry liability insurance on the tractor and mower involved in the accident.

The supreme court upheld the lower court decision. It held that the Arkansas governmental immunity statute extended immunity to employees engaged in the performance of their duties as well as to the school district itself. The court took note of the plaintiff's claim that all political subdivisions are required to carry motor vehicle liability insurance and that, under Arkansas statute, a failure to do so results in the district becoming self-insured and, if found negligent, liable up to an amount not to exceed the minimum amounts prescribed in the Motor Vehicle Safety Responsibility Act. The court also noted, however, that implements of husbandry are not required by statute to be registered and, therefore, insured. The court held that the tractor and mower were clearly within the definition of an implement of husbandry and, therefore, were not required to be registered or to carry liability insurance.

NOTE: Although no liability was assigned to the district in this case, the case nonetheless provides a valuable reminder to both teachers and coaches. Grounds maintenance staff usually arrive unannounced on school grounds because their schedule is dependent on weather as well as other variables. It is virtually impossible for teaching and coaching staffs to plan activities around their arrival. Staff would be prudent to stop activities and to have students stand a safe distance away while the immediate playing area is mowed. Injuries due to objects being thrown by mowers are foreseeable; therefore, do not resume activity until the mower has moved a safe distance away.

Williams v. East Baton Rouge Parish School Board
723 So. 2d 1093

Issue: No insurance coverage for injured football player

Level of Court:	Court of Appeals
Date/State:	1998/Louisiana
Decision:	Plaintiff/Affirmed as amended

The plaintiff broke his leg in four places while engaged in a varsity football game. Contradictory evidence was presented at trial as to the cause of the plaintiff's injury. The plaintiff alleged he tripped over a long jump board on the runway located outside of the sideline while pursuing an opponent. Coaches from both teams testified that the plaintiff suffered his injury during the course of making a tackle and that they did not see him slip or trip on the long jump runway.

After the ambulance arrived, the plaintiff was transferred to the hospital. He was refused admittance because he lacked insurance and was transferred to another hospital. He was treated three hours after the accident and required pins and rods to be surgically inserted into the injured leg. The plaintiff's injury left his injured leg an inch and a half shorter than his other leg. The plaintiff brought suit, claiming the district was negligent in locating and maintaining the long jump runway and negligent in allowing the plaintiff to play without insurance. Damages for mental anguish and emotional distress were also sought for his father, who witnessed the injury.

The trial court ruled that the evidence supported a finding that the injury resulted from a tackle rather than a tripping over the long jump board. Because the injury suffered by the plaintiff was an inherent risk of contact within a football game, the court found the district not negligent in causing the plaintiff's injury. The court also denied the father's claim for emotional distress in observing the injury. The court went on to rule, however, that the school district was liable for damages sustained by the plaintiff as a result of the district's failure to insure that the plaintiff had available insurance coverage. The court also awarded damages to the father for the emotional distress he had to endure as a result of having to watch his son suffer in pain while awaiting medical treatment due to the lack of insurance coverage.

The plaintiff appealed the trial court ruling, claiming the court erred in (1) not finding the school district strictly liable for his injuries; (2) not finding the district liable for the location and maintenance of the long jump runway; (3) finding that his injuries were more probably than not caused by a tackle and not by the long jump runway; (4) computing his past and future medical expenses; (5) failing to award certain expert witness fees; and (6) denying the father's claim for emotional distress in observing the injury. The district also appealed, claiming the trial court erred in ruling that the school district breached its duty for failing to have available insurance or obtaining a valid waiver of insurance coverage for the plaintiff.

The court of appeals found no manifest error in the trial court finding that the injury resulted from a tackle rather than from tripping over the long jump runway. However, the court ruled that, whereas state statute gave school boards the discretion as to whether or not to provide student-athlete insurance, once the board decided to provide insurance, a duty attached to insure that all of the athletes had access to the insurance. The court noted testimony of a coach who indicated that all athletes were provided an insurance packet. The packet included applications for insurance as well as an insurance waiver form indicating that the athlete was covered by insurance and would not hold the school responsible. The court ruled that "because of the nature of contact sports, students are exposed to situations where they can and/or will be harmed. Coaches

should not knowingly allow a student who has neither applied for the school's insurance nor completed the insurance-waiver form to play and be put in harm's way." The court reviewed testimony indicating the plaintiff had informed his coach prior to playing that he had no insurance but was allowed to play anyway.

The court went on to rule that the trial court erred in not awarding certain expert witness fees and in computing both past and future medical bills. The court affirmed the trial court decision while amending the awarded damages upward.

Hacking v. Town of Belmont
736 A. 2d 1229

Issue: Referees and coaches allegedly allow game to get out of control

Level of Court:	Supreme Court
Date/State:	1999/New Hampshire
Decision:	Plaintiff/Affirmed

The plaintiff, a member of her sixth-grade basketball team, suffered serious leg injuries as a result of her participation in an interscholastic basketball game. The plaintiff alleged that the referees, coaches, instructors, and employees of the school district and town allowed the game to escalate out of control. Testimony indicated that the plaintiff was knocked to the floor twice and had her leg stepped on by opposing players. As a result, the plaintiff suffered a permanent leg injury requiring surgery and ongoing medical treatment.

The plaintiff alleged that the school district and town were negligent in their care and supervision of the game. It was alleged that the defendant's employees, coaches, instructors, and referees were negligent in supervising and controlling the game properly and ensuring that the participants played in a safe manner. It was further alleged that that the school district and town failed to properly train and supervise their employees in controlling the game.

The district and town filed a motion for a summary judgment to dismiss. The defendants claimed that the doctrines of discretionary function immunity and assumption of risk warranted dismissal of the claims. The trial court denied the motion to dismiss, and the defendants appealed.

The supreme court ruled that discretionary function immunity applied to decisions made at the policy and planning level. The court held that, to the extent that the plaintiff challenged the defendant's decisions regarding the selection, training, and supervision of the coaches and referees, the defendants were immune under the doctrine of discretionary immunity. The court refused to apply discretionary immunity to the decisions made by the coaches and referees while supervising the game,

holding that these were ministerial functions. The court reasoned that to do so would undermine the rule of law in New Hampshire establishing immunity as the exception and would be tantamount to returning to absolute governmental immunity. The court stated this would "offend the basic principles of equality of burdens and of elementary justice."

The court held that, in New Hampshire, "participants in sports (other than sports in which the legislature has explicitly so provided) do not assume, as a matter of law, the dangers inherent in those sports." The court went on to say that even if it applied the doctrine of assumption of risk, a plaintiff does not assume a risk of harm unless it's a known and appreciated risk. The court stated that, if it were to apply the assumption of risk doctrine, it could not hold, as a matter of law, that the risk to which the plaintiff was exposed was an ordinary risk inherent to the game that the plaintiff should have appreciated.

Kane v. North Colonie Central School District
708 N.Y.S. 2d 203

Issue: Runner falls during indoor practice in the hallway

Level of Court:	Supreme Court, Appellate Division
Date/State:	2000/New York
Decision:	Defendant/Reversed

The plaintiff sustained an ankle injury when she tripped and fell during a track practice being conducted in the hallways of the school. The evidence was undisputed that the plaintiff and several of her teammates were not engaged in a competitive track event but rather an easy run. The coach had directed them to run continuously for 30 minutes in the hallway. The plaintiff alleged she fell when another runner stepped on her heel.

The district filed for a summary judgment to dismiss the case while asserting that the plaintiff was a voluntary participant in the track program and had assumed the risks inherent to that participation. The defendant maintained that the plaintiff was an experienced runner and knew and appreciated the risk of falling while running in track. The trial court granted the summary judgment while holding that tripping and falling were both risks inherent to running track, whether that running took place indoors or out.

The plaintiff appealed the lower court ruling, alleging that the coach was negligent in her supervision of the practice and that she unreasonably increased the risk of falling due to having the girls run indoors in a crowded environment. The plaintiff submitted expert evidence to show that the risk of contact and falling is unreasonably increased when runners do not keep a safe distance apart, typically at least one stride. Testimony indicated that the coach was aware of this risk and therefore established rules for running in the hallway. Runners were required to

maintain a safe distance and respect the running space of other runners. The coach supervised the practice and claimed she often repeated the rules if she saw runners bunching up.

The plaintiff submitted an affidavit stating that teammates were running only one foot behind her and had been running in this close fashion for nearly 20 minutes. The plaintiff alleged that she was tripped and fell immediately after passing the coach in the hall. The coach testified that she saw no bunching up on the day of the accident. The plaintiff's expert testified that allowing runners to run one foot behind one another in a school hallway created an unreasonable and dangerous risk of contact and injury. He stated it was unnecessary in the context of an easy run.

The appellate court ruled that the allegations of the plaintiff and her expert were sufficient to raise an issue of fact as to whether the defendant's supervision was inadequate and breached her duty to exercise reasonable care to protect the plaintiff from an unreasonably increased risk. The court held that the above questions of fact were questions for the jury and not properly subject to summary judgment.

Herring v. Bossier Parish School Board
632 So. 2d 920

Issue: Supervision of batting practice

Level of Court:	Court of Appeals
Date/State:	1994/Louisiana
Decision:	Defendant/Affirmed

The plaintiff was struck in the head by a line drive hit during batting practice with his team. Trial court evidence established that the coach had well-established rules, procedures, and routines for batting practice to allow for the supervision and safety of the players. Testimony showed that the coach fed a pitching machine from behind a screen on the pitchers mound. Those who were fielding were required to stay behind the infield grass except for a shagger, who would stay behind the coach and the screen. Hitters were required to bunt several balls before being allowed to swing fully at the ball. The coach would yell out "bunting" on the hitter's first bunting practice ball and yell out "hitting" on each player's first hitting practice ball. Before feeding the machine, the coach would hold the ball high above the machine for a short pause and then lower the ball into the machine. Players were instructed and required to listen to the coach, keep their eye on the ball, and remain in a defensive position.

Balls that were not fielded were "shagged" only after each batter completed bunting practice and after each player completed hitting practice. When shagged, balls would be returned to a bucket either in the

outfield or behind the coach at the pitcher's mound. The plaintiff and two other players had returned shagged balls to the bucket behind the pitcher's mound. Two of the players returned to their fielding position while the plaintiff remained behind the coach. After a teammate was two or three pitches into his hitting practice, the plaintiff stepped from behind the screen to return to his shortstop position. He stopped and leaned over to shag a ball when the next pitch was hit. It was on this hit that the plaintiff was struck and received his injuries.

The trial court ruled that the coach's rules and procedures met the reasonable and prudent practice standard for coaches of young athletes and that the coach had not breached his duty to his athletes. The court pointed out that the plaintiff had, in fact, violated most of the established rules and procedures for batting practice. The court of appeals upheld the trial court decision for the plaintiff.

Bauer v. Minidoka School District No. 331

778 P. 2d 336

Issue: Negligent supervision—Football game before the start of school

Level of Court:	State Supreme Court
Date/State:	1989/Idaho
Decision:	Defendant/Reversed and remanded

The plaintiff, a junior high student, suffered a broken leg as a result of falling over a sprinkler pipe while engaged in an informal game of football on the school grounds before the start of classes. Suit was filed against the school district, alleging inadequate supervision, improper storing of sprinkler pipes, failing to properly maintain grounds in a safe condition, and failing to warn of the dangers posed by the pipes on the playing field. The district moved for summary judgment, claiming it owed no duty to the plaintiff because of the state recreational user statute, which limits the liability of landowners for injuries on land used for recreational purposes.

The district argued that the football game fell under the recreational user statute because it occurred before official school hours, it was not organized by school officials, and the participants provided their own equipment as well as supervision and control of the game. The plaintiff argued against the motion for summary judgment, charging that the game was regularly played between 8-8:30 a.m. and included students who arrived by school bus by 8:00 a.m. The plaintiff also alleged that the principal and several teachers, who arrived early in the morning, knew the game was being played and watched the game on several occasions. It was further alleged that the principal had made it clear to students and staff that the game was only to be played on the football field and nowhere else. The motion for summary judgment was granted on the basis of the recreational user statute.

On appeal, the state supreme court held that the recreational user statute did not apply. The court ruled that, "when the principal is present, some faculty are on duty and students have arrived, the school day has begun and the recreational user statute has no application." The court held that the complaint adequately pleaded a claim for negligent supervision. The court reversed the summary judgment and remanded it to the trial court for further proceedings. The court stated, "If the district had a duty to supervise the students in the football game, and if the district should have reasonably foreseen the dangers that existed when the game was played on the field where the sprinkler pipes were stored, but failed to take precautions to protect the participants, the district breached its duty to supervise the students there."

Pomrehn v. Crete-Monee High School District
427 N.E. 2d 1387

Issue: Lack of supervision before practice

Level of Court:	District Court of Appeals
Date/State:	1981/Illinois
Decision:	Defendant/Affirmed

A member of the high school girls' softball team received serious head injuries when she fell off the trunk of a moving car while awaiting the arrival of the coach for practice. Trial court evidence indicated that the coach worked in a split-shift attendance situation and that teachers in this situation were required to stay at school until 5:45 p.m., although it was common for them to leave at 5:30 p.m. when classes ended for students. The softball team practiced at an elementary school less than a mile from the high school.

Prior to the day of the accident, the coach had left school at 5:30 p.m. and arrived at the practice field by 5:35 p.m. Practice was scheduled to start at 5:50 p.m. The day before the accident, the school principal informed the coach that she was to remain at school until the required 5:45 p.m. time. The coach claims this action was taken for harassment purposes in retaliation for several discrimination suits filed by the coach against the district. When asked by the coach what happens if one of the students gets hurt, the principal replied, "They won't."

On the day of the accident, the coach arrived at 5:45 p.m., just after the plaintiff fell from the top of the trunk of the car on which she was riding. The plaintiff alleged that the district was negligent and guilty of willful and wanton misconduct for requiring the coach to stay at school until 5:45 p.m. when it knew or should have known that this action increased the risk of injury to the softball players.

The appellate court upheld the lower court summary judgment for the defendant school district. The court held that, in order to state a claim for willful and wanton misconduct, the plaintiff must show an intentional act or one that indicates a reckless or conscious disregard of probable injury. The court ruled there was no evidence of special dangers, prior problems with the softball team members, or hazards with the practice area and that the district's behavior had, therefore, not shown reckless or conscious disregard of probable dangers.

NOTE: Supervision needs to be provided for a reasonable amount of time both before and after practice sessions. It is prudent to provide supervision from the time school is dismissed up to the start of an after-school practice, through the practice session, and up to the point when the last student has left the facility after the practice session is over. Whenever a time lag exists between the end of the school day and the start of practice (such as evening practice), clear expectations about arrival time should be communicated to all athletes. The coach should arrive 10-15 minutes before team members are scheduled to arrive.

Banks v. Terrebonne Parish School Board

339 So. 2d 1295

Issue: Supervision before the formal start of class

Level of Court:	Court of Appeals
Date/State:	1976/Louisiana
Decision:	Defendant/Affirmed

The plaintiff was injured while attempting a dive forward roll over three folding chairs stacked on top of one another before the start of class. The plaintiff approached the stacked chairs and bounced off a springboard. His feet struck the stack of chairs causing him to land on his head. He suffered a slight subluxation of the cervical spine. After a 10-day hospital stay, he fully recovered. At the time of the accident, the teacher was on the stage at the other end of the gym, collecting valuables from students who were dressing down. He did not see the accident, but, after being informed, he immediately sent the boy to the office, and the parents were notified.

Evidence at trial indicated that the plaintiff was in violation of class rules that authorized students to participate in tumbling only after they had dressed down, roll had been taken, and the teacher was available for supervision. The plaintiff had violated all three parts of this rule. The evidence established that the teacher was well qualified and that the class was properly instructed. The trial court dismissed the case while finding no negligence on the part of the teacher or the school district.

The court of appeals upheld the trial court decision holding that the law does not require that each student be personally supervised every moment. It ruled that the teacher had properly instructed the class in tumbling and had established clear rules regarding participation in class and was unaware of the plaintiff's activity because he was engaged in reasonable tasks in preparation for the start of class.

NOTE: Although no liability was assessed in this case, physical educators would be well advised to plan for the maximum supervision of students. Collecting of valuables on the stage not only left the gym area unsupervised but the locker room as well. Teachers would be prudent to not only develop clear classroom expectations, as was done in this case, but to make every attempt to put themselves in a position to observe whether or not the expectations are being adhered to. Having some students in the locker room, some in the gym, and some at the stage makes the duty of supervision a difficult one at best.

Castaneda v. Community Unit School District No. 200

644 N.E. 2d 61

Issue: Supervision—Bike collision during off-campus outing

Level of Court:	Court of Appeals
Date/State:	1994/Illinois
Decision:	Defendant/Affirmed

The plaintiff, 16 years old, was injured as a result of a bike collision with another student on a bike outing under the supervision of the physical education teacher. The course for the outing was along a municipal path employed for biking, walking, and running. The bike outing was a 30-minute out and back ride. There were 30 students in the group.

Evidence indicated that, prior to the accident, the students had cycled on the path approximately 10 times. The physical education teacher testified he had spent a day on bike safety, covering all of the material in a pamphlet published by the state on bicycle rules, prior to taking them onto the path. He had specifically instructed students to ride single file because the path narrowed in some areas and would only accommodate two bicycles passing in opposite directions. He testified that, after taking them on an initial tour of the path, he allowed them to cycle at their own pace. The teacher rode at both the front and rear of the group and was aware that the group was strung out at various intervals and was not riding as a cohesive group.

The plaintiff testified that she saw the other student riding abreast of another classmate. As the distance between the plaintiff and the other student narrowed, the plaintiff made no attempt to yell at her or to move

off of the path itself. She waited until the last minute and swerved to the right edge of the path, but the collision occurred anyway.

The trial court granted the district's motion for summary judgment while finding that the teacher's actions did not constitute willful and wanton conduct and that the teacher and district were, therefore, immune. By Illinois statute, teachers are immune for ordinary negligence and are held liable only for willful and wanton conduct, that which shows indifference or disregard for student safety.

The court of appeals upheld the trial court summary judgment. While stating that failure to ride at the rear and failure to keep the class together and in sight as a cohesive group might demonstrate ordinary negligence, it held that reasonable minds could not draw different inferences as to whether the teacher's actions amounted to indifference and reckless disregard for student safety. The court took note of the age of the students in this case and held that presumably they were more aware and predictable than a younger child, especially considering the teacher's previous experience with the group, where all instructions were followed.

NOTE: Field trips such as these present special challenges for teachers because it is difficult at best, if not impossible, to keep students in sight and prevent them from being strung out. The teacher also does not have control over the general public whom members of the class may encounter. The best a teacher can do in a case like this is to anticipate problems and situations that could occur and to teach appropriate responses and expectations relative to them.

The teacher in this case did a good job of both teaching bicycle safety and familiarizing the students to the route being employed. Teachers would be prudent to insure that all students are wearing bike helmets. As with any off-campus activity, teachers on outings such as the one in this case should carry a first-aid kit. Given the outdoor nature of this activity, the first-aid kit should contain a bee sting kit to deal with allergies. When possible, it would be helpful to employ a parent or two to help with off-campus outings that necessitate students being spread out, as they were in this case. A leader, someone in the middle, and a sweeper in the rear can reduce the stress and risk involved in these types of activities.

Brewster v. Rankins
600 N.E. 2d 154

Issue: Negligent supervision and instruction—Allowing student to borrow golf club for home practice

Level of Court: State Court of Appeals
Date/State: 1992/Indiana
Decision: Defendant/Affirmed

Parents brought suit on behalf of a 3-year-old child who was injured when struck in the head by a golf club. The club was swung by a fourth-grade student who had been given permission by his teacher to borrow the club in order to practice at home.

Trial testimony indicated that the fourth-grade student was enrolled in an optional extracurricular golf class taught by his teacher. Students in the class were taught the safe use of golf equipment and were observed practicing their skills to ensure that they were doing so safely. During the last week of the course, students were allowed to borrow a club to take home for additional practice. The teacher stressed that they were to use the same safety rules at home as were used in the class.

The trial court issued a summary judgment in favor of the defendant, and the plaintiff appealed. The court of appeals upheld the trial court summary judgment. The court ruled that the plaintiff failed to show that either the teacher or the school owed a duty to the injured child off school property and after school hours. The court held that the golf club was not an inherently dangerous piece of equipment that, if so, would require a duty of care regardless of the environment in which it was used.

The plaintiff also attempted to press a claim of negligent entrustment. To prove a case of negligent entrustment, the plaintiff must prove (1) entrustment, (2) that the entrustment of the golf club was to an incapacitated person or one who was incapable of exercising due care, (3) that the defendant had actual and specific knowledge that the person to whom they entrusted the golf club was either incapacitated or incapable of exercising due care at the time of the entrustment, (4) the entrustment was the proximate cause of the injury, and (5) damages.

The court held that the plaintiff could show entrustment and might be able to show that the fourth-grade student, due to his age, was incapable of using due care. However, the court ruled they could not show that the teacher or school had constructive or specific knowledge that the student was incapable at the time they entrusted the golf club to him. This conclusion was based upon the student's successful performance and following of the rules while in the class.

NOTE: Teachers would be wise to use great caution when issuing equipment to students for use at home if that equipment requires close supervision to ensure the safety of others. This is especially true for younger students. Equipment such as golf clubs, shots, and the discus, while not presenting major risk to the user, do present a real danger to others if safety precautions are not closely followed or the equipment is misused. This equipment, when used by inexperienced learners, is best done under the close supervision of the teacher.

Longfellow v. Corey
675 N.E. 2d 1386

Issue: Teacher abandons role of supervisor when engaging in game as competitor

Level of Court:	Court of Appeals
Date/State:	1997/Illinois
Decision:	Defendant/Reversed and remanded

The eight-year-old plaintiff was enrolled in an after-school child-care program run by his elementary school. The child-care program enlisted a leader to run the recreation segment of the program. The recreation leader involved himself in a tag game with the plaintiff. The game involved having the plaintiff stick a piece of cloth in the back pocket of his pants. He was then directed to run backwards while trying to prevent the cloth from being pulled from his pocket by the leader, who was running forward. The leader, who was much taller, bigger, and faster, proceeded to run full speed at the plaintiff in an attempt to get the cloth. The plaintiff went full effort backwards while mirroring the movements of the leader in an effort to prevent him from getting the flag. In the course of the pursuit, the plaintiff fell and suffered injuries to his mouth and teeth.

The plaintiff filed suit against the director of the program, the recreation leader, and the school district. The defendants moved to dismiss the complaint on the grounds of immunity. Illinois law provides school districts and its employees immunity for negligent as well as willful and wanton conduct in the supervision of an activity. The trial court agreed with the district and dismissed the case while holding them statutorily immune to suit.

On appeal, the plaintiff argued that the statute relied on by the defendant in seeking immunity did not apply in this case. The plaintiff argued that the statute did not "provide immunity in this case where the cause of action rests squarely on the active participation by an adult in a children's game, not on a failure to adequately supervise a children's game."

The court ruled that the defendant recreation leader and the plaintiff were engaged in an intense one-on-one competition in an activity that has a winner and a loser. The court ruled that, under these circumstances, the leader abandoned his role as a supervisor and assumed that of an equal participant. The court therefore held that the trial court erred by dismissing the case based on immunity. The case was remanded to the trial court for further proceedings on the merits.

NOTE: Activities requiring children to run backwards need to be carefully monitored. On remand, it is likely that the defendants will encounter difficulty in defending an activity that has a stronger, taller adult running forward while chasing an eight-year-old who is required to run backwards while also attempting to prevent the taking of a flag. This was not only a competitive mismatch but also an inappropriate game as it was structured. The willingness of this court to change the status of the leader from supervisor to participant, based on his actions in this case, raises an issue worth consideration. Teachers who actively involve themselves in competition with those they are charged to supervise, especially where that participation creates a mismatch, need to take heed and use caution in making their decisions.

Yancy v. Superior Ct.

33 Cal.Rptr. 2d 777

Issue: Discus thrower struck by another disc while retrieving

Level of Court:	Court of Appeals
Date/State:	1994/California
Decision:	Defendant/Reversed

The plaintiff suffered serious physical and mental injuries after being struck in the head by a discus thrown by a co-participant during her physical education class. The plaintiff had thrown her discus and walked onto the field to retrieve it. The defendant, who was throwing next, allegedly failed to observe the field before throwing his discus, failed to warn the plaintiff that he was about to throw, and failed to observe elementary safety precautions before throwing his discus.

The plaintiff brought a negligence claim against the other thrower. The trial court ruled that the primary assumption of risk doctrine applied to this case and therefore the defendant was not liable for ordinary carelessness committed during the sport. The court held that the defendant could only be held liable for reckless or intentional conduct falling outside the normal scope of the activity. The trial court granted the defendant's motion for summary judgment dismissing the case.

The plaintiff amended her complaint to allege reckless and intentional conduct and applied to the court of appeals for writ relief from the summary judgment of the lower court. The appellate court noted that, "as a general rule, people have a duty to use due care to avoid injury to others." The court also noted that, generally, defendants have no duty to eliminate risks inherent to a sporting activity but do have a duty not to unreasonably increase the risks above those inherent to the activity. The court acknowledged previous California court decisions limiting the duty of participants in active sports to other participants by holding them liable for only their intentional or totally reckless conduct outside the normal scope of the activity.

The court held that, in order to determine the duty of care required by a plaintiff's co-participant, it must answer two questions. First, is the careless conduct of participants an inherent risk to the sport? Second, will the imposing of a legal duty on participants alter the nature of the activity or chill participation in it? In this case, the court ruled that the answer to both questions would be no.

The court distinguished the participant's actions in this case from those of participants in active sports such as baseball, basketball, and football. The court noted that getting hit by a carelessly thrown baseball, fouled in a basketball game, or face masked in a football game are all inherent and, therefore, assumed risks of participation in those activities.

The court stated that the discus, by its nature, involves throwing a dangerous projectile and therefore requires careful lookout on the part of all those in the area. Getting hit by a thrown discus is a risk for anyone within the throwing area. The court ruled, however, that the issue in the plaintiff's complaint is much more specific in asking whether the risk imposed by someone who fails to even check the throwing area before launching a discus is inherent to the sport. The court of appeals held that such a risk was not inherent. The court held that, unlike many sports involving the throwing or kicking of objects or implements towards other participants in a defined area, in the discus throw only one participant is engaged in the activity at any given moment. The court held that there was nothing inherent in the sport that would require the plaintiff to expect that, while she was retrieving her disc, the next participant would throw without even looking toward the landing area.

The court stated that requiring participants in the discus throw to check the landing area before initiating a throw would not alter or destroy the inherent nature of the activity or chill participation in the activity. The court ruled that the defendant had a duty to ascertain whether or not the landing area was clear before initiating his throw and that the primary assumption of risk doctrine was inapplicable. The court held that the question of whether the defendant was negligent or whether the plaintiff was contributorily negligent should be determined by trial and not by summary judgment.

In Summary

The Reasonably Prudent Physical Educator or Coach:

1. Develops comprehensive class, team, and locker room rules and procedures and effectively communicates those to students and athletes. Establishes clear rules relative to all equipment use.
2. Strictly and consistently enforces all established class, team, school, and activity association rules.
3. Provides active supervision required within the scope of his/her employment whether in the gym, on the field, in the locker room, or in the hall. The teacher is where he/she is assigned and on time. Provides general as well as specific supervision.
4. Does not unnecessarily absent him/herself from classes or practice sessions. Gives consideration to age and composition of the group, past experience with the group, the nature of the activity and the equipment being used, and the reason and duration for any temporary absence before leaving the group for any reason.
5. Assigns only qualified personnel to conduct and supervise activities.
6. Does not allow students to engage in unreasonably dangerous activities.
7. Is aware of the health status of all students under his/her charge and provides modified activity or exclusion from activity where appropriate.
8. Develops policies to prevent the spread of communicable diseases by infected participants.
9. Carefully matches students and athletes in any activity involving potential contact, giving consideration to age, size, skill, and experience differences.
10. Keeps activities within the ability level of individual students.
11. Refrains from all use of physical discipline and punishment, including the use of exercise as punishment.
12. Does not attempt to supervise more than one area at a time.
13. Immediately attends to any dangerous situations.

Equipment, Grounds, and Facilities

Physical education and sport personnel owe a duty to their students and athletes to conduct their classes, practices, and games in a safe learning and play environment. In providing a safe environment, they take on a number of responsibilities.

Physical educators and coaches must share in the responsibility to check, on a regular basis, the grounds, facilities, and equipment used in delivering their programs to students. Any dangerous condition found to exist within the grounds or facilities should be reported immediately and measures taken to correct the condition before allowing the participation of students in or on them. The mere reporting of a dangerous condition is not enough to relieve the physical educator or coach of liability in the event of a mishap. It would be a serious mistake to continue to use an area or facility while waiting for corrective measures to be taken. If the condition represents a significant risk to the safety of students, given the activity in which they are engaged, the instructor would be well advised to either alter the activity or make arrangements to use or share another facility. Likewise, worn, broken, or defective equipment should be either repaired or replaced immediately. Continued use of such equipment while awaiting repair or replacement would be a serious error and one hard to justify before a court.

A number of activities, including football, soccer, baseball/softball, floor hockey, in-line skating, wrestling, volleyball, and gymnastics require some degree of safety equipment in order to assure reasonably safe participation by all students. Age, skill, experience, and level of play will all play a role in determining the level of risk and the type and amount of safety equipment needed. Lack of funds would be a poor argument to use in justifying the failure to supply students and athletes with such equipment.

Physical education and sport staff must exercise care in not turning an otherwise safe facility into a dangerous one through the inappropriate arrangement or use of equipment within the facility. The facility should provide adequate space for participation relative to both the number of students and the activity in which the students are engaged. Given the activity, equipment should be arranged and used in a manner allowing for safe movement and traffic patterns. The equipment should be arranged in a manner allowing for a safe zone between activity boundaries and all walls or other obstacles creating an obstruction to safe movement. When selecting an activity for any facility or when arranging the equipment for student participation, physical education and sport staff must consider the known phenomenon that students will get pushed or bumped and will trip, fall, and overrun boundaries and bases.

The spread of communicable diseases is a growing concern for physical educators and coaches. Equipment shared by participants and

that requires close, rather than merely casual, contact should be disinfected after each use to prevent the spread of communicable diseases. This entails more than cleaning up after spills of blood and other bodily fluids following injury. Disinfecting shoes and protective gear used in activities such as in-line skating and rock climbing, as well as chest straps employed with the use of heart rate monitors, is a necessity, as is daily cleaning of wrestling mat surfaces.

Product liability has become a major concern for manufacturers of athletic and physical education equipment, but it also has some implications for physical educators and coaches at the building level. As suppliers of equipment to students, school districts and physical education/sport personnel need to take care in not supplying equipment that is dangerous for its intended use. It is going to become increasingly important that those responsible for ordering equipment pay attention to the design of that equipment and the track record and reputation of the companies from whom they order. Equipment should meet or exceed all applicable safety standards. This is a relatively new area of concern for people at the building level but has the potential for real risk.

An attractive nuisance is an instrumentality (equipment) or a condition on the premises that may be reasonably expected to be a source of danger to trespassing children and that may be reasonably expected to attract them to the premises. Even in those jurisdictions where governmental immunity applies, liability will generally be assigned where it is shown that an attractive nuisance existed. In applying the attractive nuisance doctrine to child trespassers, the courts have used a four-point test to determine liability. The four conditions necessary for liability under this doctrine are as follows:

- The place where the condition is found must be one upon which the possessor of the land either knows or has reason to know that children are likely to trespass;
- The condition must be one that the possessor of the land should recognize as an unreasonable risk of harm to such child trespassers;
- The child, because of his/her immaturity, does not understand or fully appreciate the danger involved; and
- The necessity of the possessor of the land to maintain the condition must be slight compared to the risk of children that are involved.[42]

The attractive nuisance doctrine will rarely apply in the physical education, sport, or playground setting because children almost always enter school grounds and facilities as invitees and therefore fail to meet the trespass requirement for application of the doctrine. Such is the case whenever the child comes onto the school playground or playing field

that is generally held to be open to the public, whether during or after school hours. A student may become a licensee when entering an area of the premises that he or she is not authorized to enter. Rarely do they become trespassers.

Despite the general lack of applicability of the attractive nuisance doctrine in the physical education and sport setting, physical educators and coaches would be prudent to take note of the above four-point test for liability under the attractive nuisance doctrine. Steps should be taken to secure or otherwise make inaccessible any equipment or apparatus within a facility that might be accessed by students and that presents any unreasonable risk of harm to those students who, because of their immaturity, do not recognize or fully appreciate the dangers involved. For example, leaving trampolines unsecured within a gym or apparatus room invites potentially tragic consequences. When not in use, trampolines should be locked in a closed position within a locked facility. Hurdles, high jump and vaulting pits, blocking sleds, and portable steel goals are often left out rather than stored during their seasons of use. Again, physical educators, coaches, and their school districts would be prudent to secure such equipment in some manner so as to make it unusable by children visiting the premises.

The following cases have dealt with the various issues relating to equipment, grounds, and facilities and offer a number of policy implications for physical educators, coaches, and school districts.

Berman v. Philadelphia Board of Education
456 A. 2d 545

Issue: Equipment—Lack of mouth guards and other safety equipment in hockey

Level of Court:	Superior Court
Date/State:	1983/Pennsylvania
Decision:	Plaintiff/Affirmed

The plaintiff, an 11-year-old fifth-grade student, turned out for an after-school intramural hockey program run by the physical education specialist. During the course of a game, the plaintiff faced an opposing player who made a backhand shot. In making his shot, the opposing player's follow-through motion caused the blade of the hockey stick to hit the plaintiff in the mouth. As a result of being struck, the plaintiff had five teeth severed, causing severe pain and extensive dental treatment. The plaintiff brought action against the school board for negligence based on their failure to provide necessary safety equipment. The court found for the plaintiff, awarding $83,190 to the child and $1,810 for the parents.

The school board appealed on two grounds. First, they claimed there was insufficient evidence to support a finding of negligence based on the fact that the Amateur Hockey Association of the United States had no regulations requiring mouth guards for participants of amateur ice or floor hockey. The school board contended, therefore, that no standard of care was established upon which a finding of negligence could stand and that without a regulation to the contrary, the teacher was not required to furnish mouth guards. They contended that the teacher's general instructions, officiating of the games, and calling of penalties were sufficient actions to satisfy a reasonable standard of care. The school board's second contention in appealing the trial court decision was that the plaintiff assumed the risk and was contributorily negligent.

Testimony showed that the physical education teacher was well aware of the potential for mouth injuries and had, in fact, requested the purchase of safety equipment two or three times during the program's first year, but to no avail. Testimony showed that students were instructed at the beginning of each season that slap shots, raising the hockey sticks above the waist, and checking were prohibited. Students were equipped with hockey sticks composed of wooden shafts and plastic blades but no helmets, face masks, mouth guards, shin guards, or gloves were provided.

The Superior Court ruled that the duty to provide for the safety and welfare of students participating in the hockey program was breached by the school board. Notwithstanding the fact that there were no rules or regulations requiring mouth guards in effect at the time of the accident, the instructor was well aware of the potential for mouth injuries and had requested the board for appropriate safety equipment.

The court noted that an 11-year-old has a rebuttable presumption of being incapable of contributory negligence. Pennsylvania requires that any rebuttal of this presumption must review the child's conduct "in light of the behavior of [children] of similar age, intelligence and experience." Noting that the plaintiff's only experience and knowledge of hockey was obtained in the school program, and that no previous serious injuries had occurred in the program, the court ruled the plaintiff incapable of contributory negligence.

As to assumption of risk, the court ruled that, by reason of his young age and lack of intelligence, experience, and information, the plaintiff did not appreciate the dangers of floor hockey. On the basis of the above arguments, the Superior Court affirmed the trial court judgment of negligence.

Sutphen v. Benthian and the Vernon Township Board of Education

397 A. 2d 709

Issue: Equipment—Lack of protective equipment in floor hockey

Level of Court: Superior Court, Appellate Division
Date/State: 1979/New Jersey
Decision: Dismissed/Reversed

The plaintiff, a 10th-grade student, was struck in the eye by a hockey puck while playing floor hockey in his physical education class. The accident resulted in a retinal detachment and eventual removal of the eye. The plaintiff and his father sued both the physical education teacher and the school district, alleging negligence in requiring him to participate in the hockey game "with an excessive number of players on each team, in a playing area that was too small for the purpose, and without providing him with, and requiring him to use, proper protective equipment during the contest." The following facts were not disputed in this case:

1. School authorities were aware, from the time the plaintiff entered kindergarten, that he had a sight deficiency in his right eye.
2. The gym, at the time of the accident, was divided in half, with the hockey game being played on one-half of the court.
3. No protective equipment for the facial areas or the eyes were provided and, although safety glasses were available if requested, no such request was made by the plaintiff.

The defendants moved for summary judgment at the trial court, contending they were immune from liability under the New Jersey Tort Claims Act and that they owed no duty to the plaintiff. Their claim to immunity was based on assertions that their acts were discretionary and thus immune from suit. The trial court granted summary judgment for the defendants.

The appellate court reversed the trial court judgment and remanded the case for trial. The court ruled that the conduct of the teacher was clearly not the type of "high-level policy decision" addressed by the section of the tort claims act dealing with discretionary duties. In holding the summary judgment to be entirely unwarranted, the appellate court stated that the case clearly presented several questions of fact for determination by a jury, including the following:

1. "Whether the floor hockey game sponsored by the defendants was an activity having more than the basic elements of risk, due to the nature of the game;

2. Whether participation in this activity required the wearing of protective equipment;
3. Whether, in the circumstances, the supervision provided was adequate;
4. Whether defendants were negligent in leaving to the plaintiff the decision to wear or not to wear a face mask and safety glasses;
5. Whether the defendants were negligent in allowing the plaintiff, whom they knew had defective vision in his right eye, to participate in a potentially dangerous activity without protective equipment;
6. Whether defendants had given the plaintiff adequate prior instruction in the skills and dangers of floor hockey; and
7. Whether defendants were negligent in organizing and sponsoring the floor hockey game to be played in a small area of the gym and with an excess number of players on each team."

The court dismissed the defendant's claim that no duty was owed, asserting that such a claim was without any merit.

Zmirowitz v. Roman Catholic Diocese of Syracuse
710 N.Y.S. 453

Issue: No protective mask for catcher during pitching practice: enhanced risk not ordinarily inherent to the activity

Level of Court:	Supreme Court, Appellate Division
Date/State:	2000/New York
Decision:	Plaintiff/Affirmed

The plaintiff, a ninth grader, was acting as a catcher during tryouts for a fast-pitch softball team at her high school. On the day of the accident, practice was being held inside one of the school gyms. Trial evidence indicated that the plaintiff was not wearing a catcher's mask, helmet, or chest protector. Testimony indicated that, during the time prior to the plaintiff's accident, one of the coaches stood behind her in the umpire position for up to 10 minutes, using a radar gun to clock the speed of the pitches. Although some of the pitches were clocked at 50 mph, the plaintiff was never directed by any of the coaches to wear protective gear. The equipment was locked in a storeroom adjacent to the gym. The plaintiff was injured when, after she signaled the pitcher for a fastball, the pitcher threw a curve instead. The pitch bounced off the edge of the plaintiff's mitt and hit her in the nose. The plaintiff suffered a concussion and a broken nose that required surgery to correct.

Expert testimony for the plaintiff indicated that the Amateur Softball Association (ASA) rules require a catcher who is warming up a pitcher to wear protective gear, including a mask and a helmet. The expert also testified that this was the prevailing custom of most schools within the state and represented best practice. The expert testified that the protective gear was to protect the catcher from being hit by the bat, a foul ball, or a pitched ball. The plaintiff alleged the coach and school district were negligent in their supervision of the softball tryout and in failing to supply the plaintiff with the necessary safety equipment.

The defendants offered expert testimony acknowledging that the school was bound by ASA rules but that the rules applied to games and not practice sessions or tryouts. The defendants stated that the protective gear was unnecessary when no batter was present. They did not refute the plaintiff's expert who stated that it was standard practice in the state to require the wearing of protective equipment during practice sessions.

The jury returned a verdict for the plaintiff. The defendants appealed and asserted they were entitled to a directed verdict on the basis of assumption of risk. The appellate court ruled that it is the duty of schools and their coaches to exercise reasonable care in protecting athletes voluntarily participating in extracurricular athletics from unassumed, concealed, or unreasonably increased risks. The court held that the failure of the district and its coach to require the plaintiff to wear protective gear while catching unreasonably enhanced her risk of injury beyond that which is normally associated with the activity. The court agreed with the plaintiff's assertion that the coach's conduct was a breach of sound coaching practice commonly accepted throughout the state.

NOTE: Coaches would be prudent to become familiar with the rules and guidelines for their sport, which are included in the handbooks of each state high school activity association, the National Federation of High School Associations, and appropriate outside groups such as the Amateur Softball Association. Coaches should apply all safety rules and guidelines to both practices and games because the mechanism for injury is no different in practice than in games. Juries will tend to not make a distinction and will always give close scrutiny to the common and accepted practice within the field.

Curtis v. Board of Education of Sayre Public Schools
914 P. 2d 656

Issue: Failure to provide catcher's gear in softball class

Level of Court:	State Supreme Court
Date/State:	1995/Oklahoma
Decision:	Defendant/Reversed/Reversed

The plaintiff received injuries in his physical education class while playing in a game of softball. Trial evidence indicated that the plaintiff was directed by the teacher to play catcher but was not provided with a catcher's mask. He suffered serious injury when he was struck in the mouth by a baseball bat.

The district was charged with negligence in failing to provide the plaintiff with the appropriate safety equipment for the game. The district filed a motion for dismissal, claiming it was immune by state statute for any liability arising from the game. The Oklahoma Governmental Tort Claims Act waives liability of school districts for any loss resulting from participation in or practice for any interscholastic or other athletic contest. The trial court granted the district motion, and the plaintiff appealed.

The court of appeals reversed the trial court dismissal while holding that the statutory limitation on liability applied only to losses occurring from voluntary participation in interscholastic athletics or other athletic contests similar in nature to interscholastic athletics. The court ruled that mandatory participation in a school's physical education program was not intended to be subject to the waiver of liability intended by the statute.

The state supreme court vacated the court of appeals decision and reinstated the trial court order for dismissal on the grounds of governmental immunity. The court held that the phrase "other athletic contests" did cover participation in the physical education class softball game. The court ruled that an athletic contest is any athletic or sports competition where participants strive for superiority or victory and that the class game fell within the parameters of this definition.

NOTE: Absent the ruling on governmental immunity in this case, liability for the plaintiff's injuries would have clearly laid with the school district. Prudent practice requires that physical educators not only supply but also consistently enforce rules relative to the wearing of commonly accepted safety equipment.

The ruling in this case could have easily gone the other way in other jurisdictions covered by similar statutory limitations on liability. The court in this case focused on the nature of the game in deciding whether or not it was an athletic contest under the statute. Another court might very well go the way of the dissent in this case and focus on the voluntary

or required participation issue in determining whether or not it met the definition of an athletic contest.

Selph v. North Wayne Community School District N. 200
581 N.E. 2d 898

Issue: Failure to require or provide shin guards in soccer-type activity

Level of Court:	Court of Appeals
Date/State:	1991/Illinois
Decision:	Defendant/Reversed and remanded

The plaintiff suffered a broken lower leg after being kicked in the shin by another player while playing speedball in his physical education class. Speedball resembles the game of soccer. Trial court evidence indicating that no shin guards were required or provided was undisputed. The plaintiff alleged that the school district was negligent in not providing protective shin guards for the game.

The trial court dismissed the case while holding that the plaintiff failed to adequately plead a cause of action. The trial court ruled that the plaintiff had to allege (1) that he was engaged in a school-related activity; (2) that his injury was one that commonly occurs as a result of that activity; (3) that his injury was severe; and (4) that the equipment the school district failed to supply would have been fit for the purpose of preventing the injury. The court based the above requirements and its ruling on a series of previous court decisions.

The appellate court held that the trial court misapplied the rulings in the previous decisions upon which it relied. The court ruled that the plaintiff was clearly involved in a school-related activity and was owed a duty by the school district requiring the furnishing of appropriate equipment, including safety equipment, necessary for safe participation in the activity.

The plaintiff's complaint alleged the school district failed to furnish him with shin guards, failed to warn him that shin guards should be worn, and failed to allow him the choice of not participating when it knew, or should have known, that such failures on its part endangered his safety. The court found that the plaintiff's complaint was sufficient to withstand a motion to dismiss and, therefore, reversed the dismissal order of the trial court and remanded the case for trial proceedings on the merits of the case.

Baker v. Briarcliff School District
613 N.Y.S. 2d 660

Issue: Field Hockey—Allowing students to practice without mouthpieces and negligent supervision

Level of Court: Supreme Court, Appellate Division
Date/State: 1994/New York
Decision: Plaintiff/Affirmed

A 16-year-old athlete sustained mouth injuries during a varsity field hockey practice when struck in the mouth by a hockey stick swung by a fellow athlete. The plaintiff was not wearing a mouthpiece at the time of the accident.

The plaintiff's father brought suit, claiming the district was negligent in failing to properly supervise the practice, in allowing the team to practice without proper safety equipment, and in failing to warn student athletes of the risk of not wearing the proper safety equipment.

The defendant moved for summary judgment, claiming the affirmative defense of assumption of risk was established as a matter of law. The school district argued that the plaintiff was not wearing her mouthpiece despite having it with her and being aware that there was a requirement that they be worn. Based on her failure to wear the mouthpiece, the district argued that she assumed the risk and therefore was barred from any recovery for her injuries. The trial court denied the motion for summary judgment, and the district appealed.

The appellate court reviewed depositions, affidavits, and other evidence from the trial court. The plaintiff testified in her deposition that the coach never gave any safety instructions or warned of the risks in not wearing the mouthpieces. She also testified that, on the day of the accident, most team members were practicing without mouthpieces and that they had been practicing for a half hour prior to the accident. The coach testified in her deposition that she could tell whether or not a player was wearing her mouthpiece by simply looking at her. She stated her only lecture regarding safety equipment was at the beginning of the season when players were told to wear their mouth guards and shin guards to protect themselves.

National Federation rules for field hockey required that before games, players had to line up in front of their bench while game officials checked all safety equipment. The coach testified she did not check the safety equipment being worn by team members prior to the start of practice.

An affidavit by the plaintiff's expert witness stated that it was the duty of the coach to check safety equipment prior to the start of practice rather than relying on the student athletes to remember. He further stated it was the responsibility of the coach to monitor and enforce the wearing of the safety equipment throughout the practice session. Given that it is

easy to tell whether or not players are wearing mouth guards, the expert testified that the coach should have seen that the plaintiff was not wearing her mouth guard and should not have allowed her to continue playing. Finally, the expert testified he had reviewed the coach's instructions given on the use of safety equipment and found them to be inadequate. He stated that extensive discussions must take place between coaches and athletes regarding the dangers and risks involved in the sport. He suggested that athletes should be given written material on safety to review. He testified that, in his opinion, the coach did not adequately explain to her athletes the importance of wearing mouth guards and the specific risks involved in failing to do so.

The Supreme Court, Appellate Division, stated that assumption of risk in competitive athletics is not an absolute defense against liability but a measure of a defendant's duty of care. It held that students who participate in interscholastic sports assume the risks inherent to the sport but not those risks that have been unreasonably increased. Even with assumption of risk, the district retains the duty to exercise ordinary reasonable care for the safety of athletes under their care.

Based on the review of the evidence, the Supreme Court, Appellate Division, found that there were clearly triable issues of fact and that the lower court properly denied the defendant's motion for summary judgment.

NOTE: Coaches and physical educators would be prudent in paying close attention to the expert testimony in this case. Rules are not rules unless they are enforced. The enforcement of rules is clearly a supervisory duty of those in charge. When giving safety instructions to students and athletes, be specific. Don't assume that students and athletes fully understand and appreciate the risks to which they expose themselves. Simply telling students they could get hurt or that they should do something for their own protection does not mean much to young people who still see themselves living forever and envision getting hurt to mean bruises, or at the worst, a broken bone. They do not appreciate the permanency of many injuries to which they expose themselves as a result of their participation in certain activities.

Lentz v. Morris
372 S.E. 2d 608

Issue: Lack of protective gear—Tackle football in physical education

Level of Court: State Supreme Court
Date/State: 1985/Virginia
Decision: Defendant/Affirmed with dissent

The plaintiff was injured while playing tackle football during class without wearing any protective equipment. Suit was brought, alleging that the physical education teacher was negligent for allowing the game to be played without protective gear when he knew or should have known that the game posed a danger to the participants. The suit also alleged negligent supervision in allowing the plaintiff to be tackled with "great force and violence," thereby causing his injuries. The trial court ruled in favor of the defendants on the grounds of governmental immunity.

On appeal, the plaintiff contended that the trial court erred in ruling the teacher immune from suit. The plaintiff based his contention on two previous decisions by the Virginia Supreme Court. In Crabbe v. School Board and Albrite, 164 S.E. 2d 639 (1968), the supreme court ruled that governmental immunity of school districts did not extend to teachers in the performance of their duties. The court held that the teachers are liable for their own acts of negligence. The supreme court upheld this decision 11 years later in Short v. Griffits, 255 S.E. 2d 479 (1979). In the Short case, the court ruled that an athletic director, baseball coach, and buildings and grounds supervisor did not enjoy immunity in a suit by a student who was injured when he fell on broken glass while running laps on the school track.

In the current case, the supreme court upheld the trial court decision of immunity, thereby overruling the two decisions cited by the plaintiff. In making its decision, the court relied on its decision in Messina v. Burden, 321 S.E. 2d 657 (1984). In Messina, the court reviewed its prior decisions on governmental immunity arising from diverse factual situations and outlined a four-part test to be used in determining individual entitlement to immunity. The four factors to be considered in making the determination are as follows:

1. "The nature of the function the employee performs;
2. The extent of the government entity's interest and involvement in the function;
3. The degree of control and direction exercised by the governmental entity over the employee; and
4. Whether the alleged wrongful act involved the exercise of judgment and discretion."

In the present case, the court ruled that the teacher was performing an important public function as a schoolteacher and that the school district had both official interest and direct involvement in the instruction and supervision of students. The court found that the district does, in fact, exercise control and direction over the teacher through the school principal. The court also held that a teacher's supervision and control of a physical education class, including the decision as to what equipment is to be worn by student participants, involves the exercise of judgment and discretion. The lower court decision was affirmed.

Justice Stephenson dissented. In his dissent, Justice Stephenson stated that both the Crabbe and Short unanimous decisions represented 20 years of established law and the fact that the state legislature never enacted any legislation to overrule the Crabbe decision indicated that the legislature considered the Crabbe decision to be sound public policy.

NOTE: This case was decided solely on the basis of the immunity issue. In any jurisdiction where a school district is not cloaked in immunity, it would be very difficult to defend a decision to involve students in a game involving tackling where no protective equipment is provided. Prudent practice requires the provision of reasonable safety equipment in any activity that demands it, whether it is football, wrestling, softball, or any other activity where protective equipment is needed to effectively reduce the risk of student injury.

Palmer v. Mount Vernon Tp. High School District 201

662 N.E. 2d 1260

Issue: Lack of safety equipment—Protective eyewear in basketball

Level of Court:	State Supreme Court
Date/State:	1996/Illinois
Decision:	Defendant/Reversed and remanded/Reversed

The plaintiff suffered an eye injury during his high school basketball practice when poked in the eye by another player. As a result of the injury, the plaintiff lost sight in the injured eye. The plaintiff sued, charging the district with negligence in failing to warn of the dangers of basketball and failing to allow the wearing of protective eyewear.

The plaintiff testified that he was concerned about possible eye injury and had been considering the wearing of protective goggles. He testified that a month before his injury he borrowed a pair of "Rec-Specs" from a teammate and wore them during practice until his coach told him to take them off before injuring another player. Although his testimony was supported by the player from whom he borrowed the eyewear, the coach, assistant coach, and other players testified that they never saw anyone wear protective eyewear during practice and had never heard the coach

tell anyone to take off protective eyewear. Because of this alleged incident, the plaintiff presumed the coach would not allow him to wear protective eyewear.

The plaintiff stated that neither his coach nor anyone else involved with the basketball program told him that he could provide his own eyewear. He also testified that he had never seen any of his teammates use protective eyewear and that he had never informed his coach that he feared an eye injury and therefore wanted to wear some form of protective eyewear. The coach testified that the rules did not require protective eyewear, but if a player feared an eye injury, he would permit them to be worn.

The trial court returned a verdict for the school district, and the plaintiff appealed. The court of appeals reversed the trial court and remanded the case for a new trial. The appellate court ruled that the trial court erred in not giving the jury instructions that defined the school's duty to include warning students to furnish their own protective gear to prevent injury and to exercise ordinary care in allowing students to use equipment to prevent serious injury.

The supreme court reversed the court of appeals, thereby reinstating the decision of the trial court. The court ruled that school districts have a duty to supply students with safety equipment that is reasonably necessary to protect students from reasonably foreseeable and serious injuries. The court reasoned that if the equipment was reasonably necessary, the district could not waive its obligation by merely warning students to provide their own.

In Illinois, teachers are immune to liability for instruction and supervision except where their conduct is shown to be willful and wanton misconduct. Although there was dispute as to whether or not the coach allowed protective eyewear to be worn, the court ruled that any decision to not allow it would not rise to the level of willful and wanton misconduct.

Harvey v. Ouachita Parish School Board

674 So. 2d 372

Issue: Optional equipment becomes required equipment for football player with history of previous injury

Level of Court:	Court of Appeals
Date/State:	1996/Louisiana
Decision:	Plaintiff/Affirmed

The plaintiff was a star running back and linebacker for his high school football team and was being recruited by several universities to play ball. He was injured during the third quarter of a game when he was illegally tackled after intercepting a pass. An opposing player grabbed

him by his face mask, driving him to the ground. While he was on the ground, with his face mask being pulled, another pursuing player piled on. The combined force of the two players involved in this tackle left the plaintiff with a compression injury to his spine. The plaintiff laid on the ground, unable to feel or move anything from the neck down, for a period of 15 minutes. The plaintiff's paralysis was temporary. After regaining feeling and movement, he was transported to a hospital. An MRI disclosed he had a ruptured cervical disc. He underwent a fusion of two cervical vertebrae, using bone from his hip. He subsequently had to give up hope of playing college ball.

Evidence at trial indicated that the plaintiff had suffered two previous injuries to his neck, although both were somewhat minor. The plaintiff's father was a chiropractor and treated his son after the second injury. The day after the second injury, the plaintiff's father called and informed the coach that his son would miss a few days of practice while being treated. He also notified the coach that his son would have to wear a neck roll for an indefinite period of time to protect his neck from further injury.

Neck rolls were considered optional equipment for the football players. The school supplied each athlete with standard protective equipment and carried replacements for standard equipment when playing away games, but the school did not carry spare replacements for optional equipment. The plaintiff's parents had purchased a neck roll for their son shortly after his initial two injuries in August. The plaintiff wore the neck roll for all practices and in the first regular season game a week prior to his accident. Evidence indicated that, during the second quarter of the game in which he was injured, the plaintiff had his neck roll forcibly torn from his shoulder pads. A referee picked up the damaged neck roll and, after briefly waving it overhead, threw it off the field. The plaintiff played the remainder of the second quarter without a neck roll. At halftime, the plaintiff asked the trainer about a spare neck roll. He was told there was none. The plaintiff did not ask any of the coaches about a neck roll and resumed playing the third quarter, in which he received his injury.

The plaintiff alleged that the coach and school district were negligent in their supervision of the plaintiff and in failing to provide him with equipment intended to prevent his injury. The trial court found for the plaintiff and awarded nearly $216,000 in damages. Applying the doctrine of comparative negligence, the court assigned 80% fault to the coach and 20% fault to the plaintiff.

On appeal, the court of appeals upheld the trial court finding of negligence while reducing the total award to $181,000. The court held that the coaching staff had the duty to reasonably protect players from injury. The court noted testimony that indicated the coaching staff sometimes ridiculed players who complained of injuries or who asked for additional protective equipment. The court also noted the head coach's testimony in which he stated the entire staff was responsible for

monitoring athletes with injuries or those with special equipment needs, yet no one inquired about the removal of the plaintiff's neck roll during the second quarter of the game. The head coach admitted he knew that the plaintiff's father did not want him playing without a neck roll and, by his own testimony, he admitted that a neck roll was not optional equipment for the plaintiff but was required equipment necessary to prevent possible further injury to him. The court ruled that the record provided ample support for the findings and decision of the trial court.

Hunt v. Skaneateles Central School District
643 N.Y.S. 2d 252

Issue: Scrimmage pinnies—Protective equipment for football practice?

Level of Court:	Supreme Court, Appellate Division
Date/State:	1996/New York
Decision:	Plaintiff/Reversed and dismissed

As a result of a tackle during a full contact football drill, the plaintiff suffered a broken leg. At the time of the injury, the plaintiff was practicing as a running back. The plaintiff alleged that the district was negligent in its supervision of the drill because players were not required to wear scrimmage pinnies or vests of different colors to distinguish offensive from defensive players.

The handbook of the New York State Public High School Athletic Association, as well as the National Federation Code of Interscholastic Football Rules, required practices to be conducted with full protective equipment and prohibited players from wearing illegal equipment in games, specifically, any equipment that is dangerous or causes confusion. The plaintiff alleged that pinnies constituted protective equipment and that failure to require them to be worn caused confusion during the drill and therefore caused his injury.

The school district filed for summary judgment to dismiss the case. The district's motion was denied. The trial court ruled that a question of fact existed as to whether the pinnies constituted protective equipment and, if so, a further question of fact existed as to whether they must be worn for contact practice.

On appeal, the Supreme Court, Appellate Division, reversed the trial court denial of the motion for summary judgment and dismissed the case. The court ruled that, in New York, voluntary participants in interscholastic sports assume the risks to which their participation exposes them and that the district only owes a duty of ordinary reasonable care to protect them from unassumed, concealed or unreasonably increased risks. The court held that a plaintiff's awareness of the risks to be assumed would be measured against their age and experience.

The court took note that the type of injury to the plaintiff was quite common in interscholastic sports, especially football. Given the age and experience of the plaintiff, the court concluded the plaintiff assumed the risk of his injury as a matter of law.

NOTE: Two issues are worthy of noting here. When involving students and athletes in contact activities, physical educators and coaches would be prudent in eliminating the confusion factor. Clear distinction between teams, as well as all court or field boundaries, makes sense both in terms of effective teaching and practice as well as in terms of safety.

In numerous court actions, defendants have attempted to dismiss the need for protective equipment, required by the rules for games, while engaged in practice sessions. Making claims that safety rules required for games do not apply to practice sessions is a weak argument, especially when talking about the wearing of protective equipment. Rules requiring protective equipment in games should be prudently applied to all practice sessions as well. Other rules established in part for safety, such as the one requiring all softball or baseball bases to be anchored to the ground, should be applied to both practice sessions and games. Whether students or athletes are running the bases in a drill, in an intrasquad scrimmage, or in an interscholastic game, unsecured bases pose the same hazard. Those risks intended to be minimized by the wearing of protective equipment exist not only in games but in drill and practice scrimmages as well.

Ward v. Community Unit School District No. 220

614 N.E. 2d 102

Issue: Lack of space between two playing fields

Level of Court:	State Court of Appeals
Date/State:	1993/Illinois
Decision:	Defendant/Affirmed/Vacated/Affirmed in part, reversed in part, and remanded

The plaintiff, a nine-year-old elementary school student, was injured as a result of a collision with a middle school student. Trial court evidence indicated that the middle school and elementary school were adjacent to one another and that they shared a large playing field area in the back. The large playing area was divided into smaller game areas, marked off using a permanent substance to designate boundaries. The fields were used by both schools for physical education, intramurals, and athletics. Two of the fields were used for football and soccer and were laid out in an end-to-end fashion.

On the day of the plaintiff's accident, he was sitting in the end zone of one of the football fields, watching an intramural game of flag football. The adjacent field was being used by a middle school physical education

class for a football game. The injury occurred when a middle school student ran through his end zone and into the adjacent field while attempting to catch a football. When the middle school student collided with the plaintiff, he accidentally kicked him in the head, causing a depressed skull fracture. From this injury, the plaintiff developed permanent seizures and epilepsy. The plaintiff alleged that the school district was guilty of negligence as well as willful and wanton misconduct in the design and use of the two fields, which were almost immediately adjacent to one another.

The trial court dismissed the case for failing to state a proper cause of action. This ruling was based on the state statute granting governmental immunity to school districts and their employees. The plaintiff appealed the lower court ruling.

On appeal, the appellate court held that the district and its teachers were immune from liability for any alleged negligence in its supervision of the games that were taking place when the injury occurred. The court ruled that the exception to immunity for the use or supplying of defective equipment did not extend to allegedly defective premises created by the physical layout of the playing fields. The court found that, even if negligent, no evidence was presented which would support finding the use of the adjacent fields as being willful and wanton misconduct. The court took note that the language of the complaint was very general rather than specifying dimensions and distances. The finding of the lower court was affirmed and the case dismissed.

The supreme court vacated the decision of the court of appeals and remanded it back to the appellate court for further consideration in light of the supreme court decision in Sidwell v. Griggsville, 588 N.E. 2d 1185. On review, the court of appeals held that, although the district was immune from liability based on alleged negligence in supervision, as a landowner, the district had a duty to protect its invitees from physical harm caused by a condition on the land. The duty of the landowner exists only if he knows or, by the exercise of reasonable care, would discover the condition, realizes that it involves an unreasonable risk of harm to the invitee, and expects that they will not discover or realize the danger and protect themselves against it. The court found that the plaintiff adequately pleaded his allegation against the district based on the condition of the land. The issue of landowner liability was remanded to the trial court for determination.

NOTE: Although much of the discussion and rulings were based on the issue of immunity in this case, it sounds a clear warning to physical educators, coaches, and administrative staff who have responsibility for overseeing activity programs as well as the development and maintenance of facilities. It is commonly accepted that, in the playing of games, students will quite often overrun boundaries. In any game, especially

those involving contact, the potential for not only overrunning boundaries, but for being pushed or tripped, is very real. It is essential that an adequate safety space or buffer zone be provided between all playing areas and between playing areas and permanent structures, walls, or other obstructions. This applies to both indoor and outdoor facilities. Having volleyball, badminton, or basketball courts share common sidelines presents real safety concerns. Effort should be made to create a safety space between courts and playing areas even if it necessitates cutting down slightly the dimensions of the court or field itself. Always allow as much space as possible between playing boundaries and walls. A minimum of 6-8 feet, depending on the activity, is recommended. Whenever the clearance beyond boundaries is minimal, walls and permanent obstructions should be padded. Never use a wall as a boundary.

Blanco v. Elmont Union Free School District
687 N.Y.S. 2d 235

Issue: Layout of relay race course in gymnasium

Level of Court:	Supreme Court, Nassau County
Date/State:	1999/New York
Decision:	Defendant/Reversed

The plaintiff, 10 years old, was injured while running a relay race during recess inside the school gymnasium. Evidence indicated that 50 children were involved in the race and were divided onto two teams. Another 25 students were in the gym observing. Cones were set up in each corner of the play area. All those taking part in the race were voluntary participants and were required to have tennis shoes on. During the course of running her lap, the plaintiff tripped, and her momentum caused her to strike the wall of the stage at one end of the gym with her head, face, and one leg.

The school district claimed that the plaintiff was a voluntary participant and had assumed the risk of injury posed by her participation. The court stated that a person who is injured while voluntarily participating in a sporting activity has no legal recourse if his or her injuries are caused by a known, apparent, and reasonably foreseeable consequence of their participation. The trial court granted summary judgment dismissing the case.

The appellate court held that the risk must not only be known but also appreciated by the injured party. The court stated that, whereas tripping was an obvious risk to running, hitting a wall was not. The court found that an issue of fact existed as to whether the placement of the cones too close to the wall created a risk of danger to participants beyond those inherent to racing. The court also held that the age and experience of a

10-year-old must be considered when assessing whether the risks were known and appreciated. The summary judgment was overturned.

NOTE: Once again, teachers are cautioned against taking an otherwise safe facility and turning it into an unsafe one through the imprudent placement of equipment. Always provide adequate buffer zones between any activity and walls or permanent fixtures as well as other play areas. Children must be expected to overrun boundaries and to be tripped, shoved, or otherwise knocked out-of-bounds. Prudent planning should allow for this.

Pomaro v. Community Consolidated School District 21
662 N.E. 2d 438

Issue: Dangerous grounds and inadequate supervision—50-yd dash in physical education class

Level of Court:	Court of Appeals
Date/State:	1995/Illinois
Decision:	Defendant/Affirmed

The plaintiff, a fifth-grade student, received serious injuries as a result of a fall at the end of a 50-yard dash being run against another student in her physical education class. Evidence presented at trial indicated that yellow lines were painted on the school blacktop, signifying running lanes. The lanes were approximately 51 yards long and ended with a finish line four feet before the blacktop met the grass fields. In the four feet between the finish line and the fields, there were loose and broken sections of asphalt.

On the day of the accident, the plaintiff was paired up with another member of the class and, on the teacher's direction, began a race from the starting line to the finish. As the race approached the finish line, a kindergarten student ran onto the blacktop from the playground and into the path of the plaintiff. After a change of direction to avoid a collision, the plaintiff was unable to slow her momentum and ran into the four-foot space beyond the finish and into the loose and broken asphalt. Her foot lodged between two broken chunks of the asphalt, causing her to fall and suffer serious injury.

The plaintiff charged that the district was willful and wanton in both their maintenance of the property and in the supervision of the class. School districts and their employees are immune from liability in Illinois unless their conduct meets the standard of willful and wanton conduct, that which shows an utter disregard or indifference to the safety of others. There is an exception to this qualified immunity for injuries resulting from dangerous facilities or equipment, provided that the facilities are used exclusively for educational and not recreational purposes. It was clear that the grounds in

question were held open for recreational as well as educational use and that the willful and wanton standard therefore applied.

The trial court granted the district's motion for summary judgment based on governmental immunity and dismissed the case. On review, the court of appeals upheld the trial court decision, holding that neither the maintenance of the property nor the supervision of the class met the standard of willful and wanton conduct. A dissenting opinion made note that the district maintenance department had done an annual inspection of the property and that the broken and loose asphalt had been present all year. In his dissent, Judge Tully said that both the district maintenance department and the physical education teacher had actual knowledge of the broken asphalt and should have recognized the danger it posed while running races on the blacktop. Recognizing the danger and proceeding anyway could be determined to be willful and wanton conduct. In his opinion, the lower court decision should have been reversed and the matter remanded to the trial court for further proceedings.

NOTE: Physical educators would be prudent to focus on the dissenting opinion in this case rather than on the decision of the majority. There is not much question that the conduct of both the maintenance department and the physical educator in this case would meet the criteria for simple negligence in any jurisdiction not cloaked in governmental immunity. It is not at all unlikely that the behavior in this case could have been found to meet the standard of willful and wanton conduct in another court. It is imperative that physical educators cease to carry out their instruction in an area once a condition of the grounds or facilities is recognized as posing a danger to the participants. Dangerous conditions should be reported immediately and activities moved to another location where they can be safely carried out until the dangerous condition is remedied.

Alter v. City of Newton

617 N.E. 2d 656

Issue: Failure to warn—Dangerous layout of field

Level of Court:	Court of Appeals
Date/State:	1993/Massachussetts
Decision:	Plaintiff/Affirmed

The plaintiff, a high school freshman, received an injury when she was struck by a lacrosse ball while sitting in an area of the school grounds known as the "mall." The mall was described as a gathering place for students. The plaintiff had just finished track practice and was waiting for her ride home.

Trial court evidence indicated that a field used for lacrosse bordered the mall. When the athletic fields were initially developed, there was a discussion as to whether to erect fences around the field or not. To honor a request by the fire department to keep the fields open, the decision was made to not erect any fences. Testimony indicated that the lacrosse goal was positioned in a manner that caused balls to enter the mall area on a frequent basis.

The plaintiff charged the district with negligence for not erecting a fence between the field and the mall to protect students, for not warning students of the hazard posed by activity on the field, and for not relocating the goal so as to minimize the hazard posed by overthrown balls.

The district filed for a summary judgment, claiming it was immune to liability because the decision to not erect a fence was a discretionary function. Discretionary functions are those that are policy making or planning in nature. The trial court denied the city's motion for summary judgment, and a verdict was entered for the plaintiff. The city appealed.

The court of appeals held that the decision to not erect a fence when the fields were first constructed was discretionary and therefore protected by immunity. However, the court found that the failure to post and communicate warnings to students about the hazard and the failure to not relocate the goals once becoming aware of the hazard constituted negligence. The trial decision for the plaintiff was upheld.

NOTE: When the cost and inconvenience of addressing risks are minimal, as in this case, it will be difficult to defend any decision to not address the problem. Posting a warning sign and repositioning the goals were easy fixes to a definite hazard.

Home v. North Kitsap School District

965 P. 2d 1112

Issue: Curb separating football field from track

Level of Court:	Court of Appeals
Date/State:	1998/Washington
Decision:	Defendant/Reversed and remanded

The plaintiff, coach of a junior high football team, was injured while attempting to protect a player from a raised curb separating the football field from the running track. Testimony before the trial court indicated that, when the plaintiff arrived at the site of an away game, he and his assistant coach discovered the raised curb, which was located close to the sideline of the playing field. Both coaches thought the curb represented a hazard to any player who might be propelled out of bounds either by momentum or by another player. After discussing different courses of

action, they decided the plaintiff would place himself in front of the curb so he could stop any player who might be heading for it.

During the course of the game, one of the plaintiff's players ran toward the sideline while executing a sweep play. Seeing a tackler approaching, the plaintiff anticipated an imminent collision and backed up to the curb, putting out his hands to stop his player. Using both hands, the coach took his player to the ground to avoid contact with the curb. The tackler ended up falling across the thigh of the plaintiff, thereby causing his injuries.

The plaintiff sued the home school district for negligence. The school district filed for a summary judgment to dismiss the case while claiming it was immune to suit under the state recreational user statute. The defendant school district also claimed the coach was a licensee who could not prove the breach of any duty owed to licensees and that the coach voluntarily assumed the risk that culminated in the injury. The trial court granted the motion for summary judgment, and the plaintiff appealed.

The court of appeals ruled that the recreational user statute did not provide immunity to the district in this case. The court held that the proper approach to use in applying the recreational user exception to liability is to analyze the purpose for which the landowner was using the land. Although noting that landowners often use land for different purposes at different times, the court held it was necessary to focus on the nature of the landowner's use at the time of the accident. The court held that, even though the school district held the premises open to public use, the premises were not open to public use at the time of the accident. At the time of the plaintiff's injury, the premises were being used for a district-sponsored activity, and, therefore, the recreational user statute did not apply.

The court stated that a licensee enters another's land for his own purposes rather than for the purposes of the owner and that an invitee is a person invited onto the premises for a purpose for which the land is held open. The court ruled that, as a coach invited to the field for a school-sponsored football game, the plaintiff was an invitee as a matter of law and that any question of a breach of duty was for the jury to decide.

Finally, the court ruled that the question of voluntary assumption of risk was a question of fact for the jury and not for summary judgment. The court took note of the plaintiff's testimony that he knew the facts and recognized the risk posed by the curb. However, the court agreed with the plaintiff that a rational trier of fact could find that, after discovering the hazard ultimately causing the accident, the plaintiff had no reasonable alternative but to stand in front of it and protect his students.

Based on the evidence and its rulings, the court of appeals reversed the trial court summary judgment and remanded the case back to the trial court for further proceedings.

NOTE: The separation of a football field from a track by a concrete curb is not an uncommon occurrence. The distance between the sideline and the curb should be a minimum of eight feet. The curb in this case was elevated several inches above ground level. The closeness of the curb and the elevation of the curb in this case combined to establish a foreseeable hazard to football players, who could be expected to overrun the sideline or be knocked out by tacklers. Athletic departments need to address reasonable solutions to facility hazards. In this case, two possible solutions would be to either grade out the field so as to be flush with the curb or re-line the sideline to provide a safe distance between the sideline and the curb, even if this means slightly altering the width of the playing area.

Fuehrer v. Board of Education of the Westerville City School District

574 N.E. 2d 448

Issue: Soccer goal falls on student

Level of Court:	Supreme Court
Date/State:	1991/Ohio
Decision:	Defendant/Affirmed

The plaintiff, the mother of a 14-year-old high school student, brought suit against the school district as a result of fatal injuries suffered by her son when a metal goalpost fell on him. Trial court evidence indicated that her son and four companions entered the school property after school hours and began playing with the metal soccer goalpost. The boys had tipped over the goalpost and were attempting to upright it when it slipped and fell on the boy's head. The district claimed that the boys were "recreational users" and that the district was, therefore, immune to suit under the state recreational user statute. The district further claimed that, even if not recreational users, the boys were licensees at best, and, as licensees, they were owed no duty by the board to warn them of the dangers of the goalposts. The plaintiff charged that the district was negligent in not warning the boys of the dangers posed by the soccer goals. The trial court approved the district's motion for summary judgment, and the plaintiff appealed.

The court of appeals upheld the summary judgment, stating that, although the boys were not recreational users, they were licensees. The court held that, as licensees, the boys were not owed a duty by the district to warn or protect them from the dangers of the goalpost. The plaintiff appealed once again.

The supreme court upheld the court of appeals decision. The court affirmed the holding that the boys were not recreational users and that the district was, therefore, not immune to suit. The court held that the boys were licensees and that the district owed them no duty "except to refrain from

wantonly or willfully injuring them, and to exercise ordinary care after discovering them in peril." The court ruled that failing to warn the boys of the danger posed by the goalpost did not constitute willful and wanton conduct and that the district was, therefore, not liable for the boy's death.

NOTE: The court in this case ruled that the boys were licensees and that no duty existed to warn them of the dangers posed by the goalpost. Most jurisdictions have held individuals on school playgrounds to be invitees because the playgrounds are clearly held open to the public. In either case, districts are not free to maintain dangerous conditions on their property of which they have constructive knowledge or notice.

Although weighing nearly 600 pounds, these goals can easily be tipped over by two or three students. Any inspection of these goals would indicate that it is a common occurrence for these goals to be tipped over. When a goal is tipped over, students often stand and bounce on the top crossbar. This accounts for the large number of soccer goals on school fields with bent upper crossbars. The U.S. Consumer Product and Safety Commission has issued a number of advisories warning of the hazard posed by soccer goal tip-overs. CPSC has reported that tip-overs of soccer goals have accounted for 23 deaths and numerous serious injuries resulting from soccer goals tipping over and crushing children who climb on them or hang from the crossbar. These goals can easily be temporarily anchored to the ground. A 1-2" section of pipe welded to the bottom of the left and right back corners of the goal, with a two-foot length of steel re-bar driven through the pipe and into the ground will keep the goals from being tipped over. District maintenance personnel can easily pull up the re-bar with either the lift on their mowers or with a tractor bucket. The goals can be relocated if desired.

Cappel v. Board of Education, Union Free School District No. 4, Northport

337 N.Y.S. 2d 836

Issue: Attractive nuisance—Field hockey goal cage

Level of Court:	Supreme Court, Appellate Division
Date/State:	1972/New York
Decision:	Defendant/Reversed and new trial granted

The plaintiff, five years of age, was injured while playing on a school playground when other children attempted to lift a field hockey goal cage and dropped it. Evidence showed that the cage was constructed of heavy galvanized steel pipe, was about seven feet tall and twelve feet wide, was located in the middle of the playing field of a junior high school where neighborhood children were welcome to play, and was not fastened to the

ground in any way. Testimony indicated that the cage was easily tipped over. On the day of the accident, the children had previously tipped the cage over prior to attempting to lift it.

The trial court dismissed the complaint at the end of the plaintiff's case. The Supreme Court, Appellate Division, reversed this decision and ordered a new trial. In granting the new trial, the court held that the evidence was sufficient for presentation of the case to the jury. The court held that the school district owed a duty to keep the school grounds in a reasonably safe condition. Invoking some of the principles of the doctrine of attractive nuisance, the court ruled that the duty of the district included consideration of the known propensities of children to climb about and play. The court held that, in this case, the duty owed to children who could reasonably be anticipated to come onto the school grounds and play on the cage was greater than that owed to a mere licensee.

NOTE: Because school playgrounds are held open to the public, a child coming onto the premises to play would be an invitee rather than a trespasser. The doctrine of attractive nuisance applies to child trespassers only. The duty owed to the plaintiff in this case was, in fact, greater than that owed to a licensee, and the attractive nuisance doctrine did not apply. The highest standard of care is owed to the invitee, one who is on the premises at the express or implied invitation of the school. With respect to invitees, schools have the duty to inspect and discover dangerous natural or artificial conditions as well as dangerous activities on the premises. Depending on the danger involved, the school must either warn the invitee or make the condition or activity safe.

Greenberg v. Peekskill City School District

680 N.Y.S. 2d 622

Issue: Dimensions of court and lack of padding on wall preclude summary judgment in basketball suit

Level of Court:	Supreme Court, Appellate Division
Date/State:	1998/New York
Decision:	Plaintiff/Affirmed

A 16-year-old was injured during a recreational basketball game sponsored by the local Police Athletic League and held in a school district gymnasium. While attempting to block a shot, the plaintiff ran out-of-bounds and crashed into a brick wall, suffering a broken ankle as a result. Suit was brought against both the Police Athletic League and the school district, alleging negligence in maintaining a dangerous condition on the premises of the school and in conducting a game on the premises while aware of the dangerous condition.

Both defendants moved for a summary judgment to dismiss while claiming that the conditions of the gymnasium were "open and obvious, and as an experienced player, the plaintiff assumed the risk of playing under those conditions." The motion for dismissal was denied, and both defendants appealed.

On appeal, the Supreme Court, Appellate Division, held that boards of education and athletic leagues have duty to use ordinary reasonable care in protecting voluntary participants in athletic programs from unassumed, concealed, or unreasonably increased risks. The court noted that the unpadded brick wall was less than the recommended minimum clearance or safety standard of three feet from the end line of the basketball court.

The court ruled that the question of whether or not the basketball court dimensions and the lack of padding on the end wall created a risk above and beyond the usual risks inherent to basketball was a triable issue for jury determination and not summary judgment.

NOTE: Although this court referred to a minimum safety clearance of three feet, those who oversee athletic programs should attempt to provide eight feet of unobstructed space beyond the end line of all basketball courts. Any wall within eight feet of the end line should be padded. Unpadded walls beyond court boundaries have contributed to countless injuries and much litigation.

Hendricks By and Through Martens v. Weld County School District

895 P.2d 1120

Issue: Unsafe facility—Unpadded gym wall

Level of Court:	Court of Appeals
Date/State:	1995/Colorado
Decision:	Plaintiff/Affirmed

The plaintiff was injured during his elementary physical education class when he slid into an unpadded wall. At the time of the injury, the plaintiff was engaged in a game that required students to run from one end of the gym to the other without getting hit by balls being thrown at the runners. There was a designated safe area at each end of the gym, an area approximately four feet deep between a black line and the wall. While running, the plaintiff ducked to avoid being hit by a ball, fell to the floor, and slid into the wall. As a result of his collision with the wall, the plaintiff severely fractured his femur.

The plaintiff charged the school district with negligence in failing to use "reasonable care with respect to the dangerous condition created by the use of the unpadded walls." The district moved for a dismissal on the grounds of governmental immunity. Colorado statute holds public entities immune from tort liability unless injury occurs within the scope of statutorily specified exceptions. One of these exceptions is for injuries resulting from the dangerous condition of any public building. The district argued that the design of the building did not specify that the walls had to be padded and therefore the unpadded wall did not qualify as a dangerous condition. The trial court denied the district's motion and, after trial, found for the plaintiff.

On appeal, the district argued that the injury was not the result of a dangerous condition of the building but in the operation of the building. The appellate court agreed with the plaintiff's contention that the physical condition of the building, combined with its use, constituted a dangerous condition of the facility. The ruling of the lower court in favor of the plaintiff was upheld.

NOTE: Walls should never be used as a boundary for any activity or game such as the one in this case. Always allow an adequate buffer space between playing areas and walls while recognizing that students will overrun boundaries and be tripped or bumped by other players or moving equipment. Whenever space between playing areas and boundaries is minimal, walls should be padded. For activities such as basketball that have students going full speed towards an end line, a minimum of eight feet clearance between the boundary and wall is recommended.

Thomas v. St. Mary's Roman Catholic Church
283 N.W. 2d 254

Issue: Facilities—Glass panels adjacent to gym entryway

Level of Court: State Supreme Court
Date/State: 1979/South Dakota
Decision: Plaintiff/Affirmed

The plaintiffs, father and son, sued St. Mary's Catholic Church for $151,950 for injuries sustained by the boy during a basketball game between St. Mary's and Chester High School. The plaintiff was a member of the Chester varsity team.

Evidence showed that, when the gymnasium was built in 1957, the church approved the installation of four glass panels in a sidelight panel adjacent to the entryway into the gym. Two of the panels had been previously broken and replaced with plywood. During the varsity game on the night of the accident, the plaintiff, in the course of a full court press, deflected the ball away from a St. Mary's player and lunged for the ball as it was going out-of-bounds. He successfully tapped the ball back into the playing area, but his forward momentum carried him through one of the glass panels in the sidelight, which was located within six feet of the court boundary line. The plaintiff suffered a severed artery and extensive lacerations on both arms. He was hospitalized for one week and had both arms in casts for two months. His right arm was in a sling and his left arm in a brace for eight months.

Testimony indicated the plaintiff's athletic endeavors were affected. Coaches testified that, prior to the accident, the plaintiff was an all-conference quarterback on the football team but could no longer play that position due to a loss of dexterity in his hands. He could not handle a baton or play softball as effectively because of a loss of grip in his hands. Employers testified that he could not do heavy work for a full year after the accident and that he had difficulty handling light tools. He encountered difficulty in doing intricate work with his hands. It was necessary for him to be treated by a doctor for over three years. Testimony indicated that the plaintiff neither realized the glass was breakable nor was he warned of the inherent danger of the glass panels located so close to the playing court.

St. Mary's denied liability on the grounds that it exercised due care, the plaintiff was contributorily negligent, and the plaintiff knew the dangerous condition and assumed the risk. In upholding the trial court, the court of appeals ruled that St. Mary's failed to exercise due care in protecting the plaintiff from the hazard of ordinary window glass placed in close proximity to the court. St. Mary's breached its duty to maintain its premises in a reasonably safe condition for use in a manner consistent with its purpose. The court ruled that the plaintiff had the right to assume

that those in charge had inspected and taken necessary precautions to assure the safety of the players. It was not the plaintiff's duty to inspect the facility. There was no evidence to suggest that the plaintiff knew or should have known the dangers that the glass presented. The court explained that, even if the danger was obvious, St. Mary's still owed a duty to invitees, such as the plaintiff, to warn and take other precautionary measures to protect them.

The court, therefore, ruled that the plaintiff could not be charged with assuming the risk. The court held that the defendant could not rely on contributory negligence as a bar to recovery because, based on the evidence, it could not be concluded that the plaintiff was contributorily negligent or, even if he were negligent, that it amounted to more than slight in comparison to that of St. Mary's. The court, therefore, held that application of comparative negligence was proper.

Sheppard by Wilson v. Midway R-1 School District
904 S.W. 2d 257

Issue: Facilities—Inadequately prepared long jump pit

Level of Court:	Court of Appeals
Date/State:	1995/Missouri
Decision:	Defendant/Reversed and remanded

The plaintiff, a member of her junior high track team, suffered a serious knee injury while competing in the long jump, requiring surgery and producing a permanent disability. Suit was filed, charging the district with negligence in maintaining an unreasonably dangerous condition in that the long jump pit was not adequately prepared. Specifically, the plaintiff alleged that the pit was wet and muddy, did not have an adequate amount of sand, and was not properly raked between jumps.

The district contended that the pit was adequately prepared and that the injury resulted from an awkward landing. The district further contended that, even if the pit was wet or inadequately prepared, the plaintiff had jumped several times prior to the injury, was aware of its condition, and therefore assumed the risk of jumping. The plaintiff countered that inadequate preparation of the pit was not an inherent risk of long jumping and was not therefore assumed.

The trial court found for the defendant, and the plaintiff appealed. The plaintiff contended that the trial court's instructions to the jury acted to make any implied assumption of risk on her part a total bar to recovery. Missouri has a comparative fault statute. Only express assumption of risk, done through written agreement, serves as a bar to recovery. Implied assumption of risk, that which is assumed by choosing to participate, does not serve as a bar to recovery but rather is used to help assign some portion of fault to the plaintiff under the comparative fault statute.

The court of appeals held that the trial court erred in its instructions to the jury. The decision of the lower court was reversed and the matter remanded to the lower court for a new trial.

NOTE: Long jump pits present a daily challenge to physical educators and coaches. It is imperative that adequate fill (usually sand) be present anytime jumpers are using the pit. Sand is constantly being displaced, not only as a result of use but also due to children playing and digging in the pit when it is not being used by the school. Prior to first use at the beginning of the season, pits should be tilled and replenished with fresh, high-quality beach sand. Prior to each practice or competition, the pits need to be raked and groomed. The pits should continue to be raked during practice and competition to keep the sand from being displaced from the landing area.

Laboy v. Wallkill Central School District
607 N.Y.S. 2d 746

Issue: Separation of pole vault pit sections

Level of Court:	Supreme Court, Appellate Division
Date/State:	1994/New York
Decision:	Plaintiff/Affirmed

A 17-year-old was injured while pole vaulting for the first time in a meet. The plaintiff had completed several successful vaults when the bar was raised to a height six inches higher than he had previously cleared in practice. During an attempt at the new height, the plaintiff realized he was not going to successfully complete the attempt and initiated a defensive maneuver to protect himself. He landed with his feet on the seam in the landing pit and two of the pit sections separated. As a result, the plaintiff struck his knee on the pavement and received his injuries.

The trial court denied the defendants' motion for summary judgment to dismiss the case. The school district had claimed that the plaintiff assumed the risk of injury by participating in the pole vault. The district had further claimed that the plaintiff was the sole cause of his own injury.

The appellate court held that any assumption of risk would not serve as a bar to recovery but as a measure of the duty owed by the defendant. The court reinforced its many previous decisions in finding the duty owed to those voluntarily participating in an athletic program to be a duty of ordinary, reasonable care to protect against unassumed, concealed, or unreasonably increased risks.

The court ruled that, in light of the plaintiff's inexperience and evidence that the landing pit failed to provide the protection it was intended to provide, questions of fact had been raised as to whether the

school district's negligence, if any, created a dangerous condition over and above those that are inherent to the event of pole vaulting. It rejected the district claim that the plaintiff was the sole cause of his own injury. Although noting that a plaintiff cannot recover damages for injuries where the sole cause is his own reckless behavior, the court ruled that nothing in the evidence suggested that the plaintiff acted in any way that could be construed as reckless. The lower court denial of summary judgment for the district was affirmed.

NOTE: Coaches and those overseeing events such as the pole vault and high jump need to make sure that landing pits are secured in a manner that prevents them from separating. They come with straps that enable them to be fastened together. It is not uncommon for these straps to become damaged because athletes often use them to hold onto when moving the pits in and out of sheds. If the straps become damaged, they should be repaired immediately. One-piece covers are also available and should be used for covering all sections of the landing pits. These covers are snapped down at regular intervals along the entire landing area, giving more security to the positioning of the pits.

Ohnstad v. Omaha Public School District No. 1

442 N.W. 2d 859

Issue: Placement of pole vault standards and proper pole for weight of vaulter

Level of Court:	State Supreme Court
Date/State:	1989/Nebraska
Decision:	Defendant/Affirmed

The plaintiff's son, a pole vaulter on the high school track team, received fatal head injuries while vaulting in his conference track meet. Suit was filed against both the host school district and the boy's school district. The complaint charged that the head track coach failed to properly supervise and instruct the pole vault event. The complaint specifically charged that the defendants were negligent in the following:

1. Failing to properly staff the event with qualified coaches;
2. Failing to properly instruct and warn of the risks involved in the pole vault;
3. Failing to properly give instructions in the techniques of vaulting;
4. Failing to properly supervise the event;
5. Failing to give instructions in the proper placement of the pole vault standards; and
6. Failing to provide proper and safe equipment.

The trial court dismissed the case against the Omaha School District after its motion for summary judgment was granted, and the case was continued against the plaintiff's school district. The evidence at trial only focused on two of the five allegations. The plaintiff contended that the coach placed the standards too far forward and that his son was too heavy for the pole that was supplied to him. The boy was injured when he fell headfirst into the metal planting box. The trial court found for the defendants and held that the injuries were the result of the boy's own "action of jumping with a low, late plant and attempting to complete the vault after he had made the [poor] pole plant." The court ruled that the defendants' negligence, if any, was not the proximate cause of the accident.

The plaintiff appealed, contending that the evidence was not sufficient to support the finding of the lower court. The court of appeals upheld the lower court decision. The court held that factual findings of a lower court would only be set aside where they are clearly incorrect. The court held that sufficient evidence was presented to support the trial court conclusions. Specifically, the court took note of three expert witnesses who said the accident was "the result of a low, late pole plant and that the placement of the standards did not contribute to the accident." They also noted the testimony of two experts who testified the boy was using the proper pole at the time of the accident.

Daniel v. City of Morganton

479 S.E. 2d 263

Issue: Rough condition of softball field causes bad bounce of ball

Level of Court:	Court of Appeals
Date/State:	1997/North Carolina
Decision:	Defendant/Affirmed

The plaintiff was injured while participating in softball practice with her high school team. The team was practicing on property owned by the school district and maintained by the city. Evidence indicated that the softball field being used for the practice was in the process of being constructed and that the surface of the field was rough. Testimony indicated that the outfield grass was intermittent with several bare spots and numerous rocks.

At the time of her injury, the plaintiff and several other team members were involved in a fielding drill. The coach stood at the edge of the infield approximately 70 feet from the players. She hit hard ground balls on the rough surface to be fielded by the players. A ball hit to the plaintiff took a bad bounce and struck the plaintiff in the mouth. She had one tooth knocked out and another loosened.

Trial court evidence indicated that the players considered the field unsafe and had complained to the coach about it. Evidence suggested that

some parents might have complained as well. The coach had told the girls that practicing on the rough field would give them an advantage in that they would be better prepared to field bad bounces.

The trial court entered a summary judgment for the defendant school district, coach, and city. The court of appeals held that governmental immunity exists for school districts and cities except where waived by purchase of liability insurance. Both the school district and the city had in fact purchased liability insurance. However, the school district policy excluded coverage for injuries resulting from participation in school-sponsored athletics. The court ruled that the trial court acted properly in dismissing the suit against the district based on its immunity.

In upholding the summary judgment for the city, the court ruled that the plaintiff was a licensee in relationship to the city. As a licensee, the city owed the plaintiff the duty to warn of hidden hazards but not those obvious to the ordinary person. In noting that the plaintiff, an experienced softball player, had testified she considered the field dangerous, the court concluded she was fully aware of the hazard posed by the field.

The court ruled that the coach was not protected by governmental immunity because her only duties were ministerial in nature. The court held that the coach was subject to the standard of a reasonable and prudent person in the same or similar circumstances. The court held that the coach breached this duty by holding practice on the rough field and then advising her players that it would improve their game. However, the court went on to rule that the plaintiff's own negligence bars her recovery. The court held that, in order for a person to avoid being found contributorily negligent, that person must disregard orders from one in authority when a reasonable person under similar circumstances would recognize that his or her compliance would result in injury.

Carter v. New Trier East High School
650 N.E. 2d 657

Issue: Willful and wanton conduct—Failure to fix hole on tennis court

Level of Court:	Court of Appeals
Date/State:	1995/Illinois
Decision:	Defendant/Reversed and remanded

A high school tennis player injured his ankle when he backed into a hole while playing on the school courts. School districts and their employees are immune to liability in Illinois for ordinary negligence. In filing suit, the plaintiff charged that the district was not only negligent but also willful and wanton in its maintenance of the tennis courts. Willful and wanton behavior has been defined by courts as intentional action, or that which is done with an utter indifference to or disregard for the safety of others.

The district moved for summary judgment and dismissal of the case, claiming its actions did not rise to the level of willful and wanton and that it was therefore entitled by law to a dismissal. The trial court granted the district's motion, and the plaintiff appealed.

The Appellate Court of Illinois ruled that the plaintiff sufficiently alleged facts establishing elements of willful and wanton conduct. The court took note of evidence that indicated that the district failed to inspect the courts. The court found that the district disregarded the uneven, depressed, and cracked condition of the tennis court for a long period of time and failed to repair the defects after complaints about the danger being posed to players were made known. The court further noted that the district failed to warn users of the tennis court even after others had been injured due to its condition. The trial court summary judgment was reversed, and the case was remanded for trial on the merits.

Hall v. Ft. Frye Local School District Board of Education
676 N.E. 2d 1241

Issue: Maintenance of sprinkler heads on football field

Level of Court:	Court of Appeals
Date/State:	1996/Ohio
Decision:	Defendant/Reversed and remanded

A member of a high school football team received a knee injury after stepping in a depression around an exposed sprinkler head. Testimony at trial indicated that the practice field was watered all summer until practice started at the end of August. The sprinkler heads, and the depressions that often developed around them, were occasionally covered with dirt or sand, although no one had any assigned responsibility to do so.

Evidence indicated that members of the athletic department had notified the district maintenance department of their concern about the risk posed by the exposed sprinkler heads to the safety of the football players. No corrective measures were undertaken by the district in response to the athletic department complaints.

The district filed a motion for summary judgment to dismiss the case while claiming it was protected by governmental immunity. Discretionary acts are protected by statutory exception to liability in Ohio. The school district was arguing, in essence, that the manner in which the district maintained and operated the football practice field involved a high degree of judgment and discretion. The plaintiff countered that the school's judgment and discretion were exercised in a reckless and wanton manner, as evidenced by their ignoring of concerns by the athletic department. The trial court granted the motion for summary judgment, and the case was dismissed.

The court of appeals reversed the trial court summary judgment and remanded the case back to the trial court for determination on the merits. The court held that the maintenance of the field was a ministerial duty and that the plaintiff had successfully raised issues of fact as to whether the maintenance of the field was carried out in a negligent manner.

McIntosh v. Omaha Public Schools

578 N.W. 2d 431

Issue: Dangerous field condition—Poorly maintained field used for spring football clinic

Level of Court:	State Supreme Court
Date/State:	1996/Nebraska
Decision:	Plaintiff/Affirmed in part, reversed in part, and remanded with directions/Defendant/Affirmed

The plaintiff, a high school freshman, was injured while taking part in a touch football scrimmage as part of a football clinic during the spring prior to his sophomore football season. Trial court evidence indicated that the clinic and scrimmage were held on school grounds under the direction of the high school football coaches. Testimony was conflicting as to whether the clinic was voluntary or required. The plaintiff and other participants testified that participation was an expectation if you planned on playing ball during the fall.

The injury occurred when the plaintiff jumped up to deflect a pass. When he landed, his left foot "stuck to the ground" while his body continued to twist. The resulting injury was a compound fracture of both the tibia and fibula. Two witnesses, as well as the accident report filed by the coach, indicated that the plaintiff's foot remained stationary while he continued to twist and fall. Evidence at trial alleged the field was poorly maintained. Specifically, it was alleged to be very hard, with little grass, and having ruts.

At trial, the district denied negligence while claiming the plaintiff had knowledge of the risks of football and was aware of the conditions of the field being played on. The district claimed that the action brought by the plaintiff was barred under the Nebraska Recreation Liability Act and further barred because the father had signed a parent permission form and a parental consent form agreeing not to hold the district responsible for any injury suffered by the plaintiff.

The trial court disagreed with the school district in holding that the lawsuit was not barred under the state recreation liability statute. The court ruled that the plaintiff was a licensee rather than an invitee and, therefore, under Nebraska law, had to prove that the district was willful and wanton in its conduct of the clinic. Both the district and the plaintiff appealed.

The supreme court held that the field being used for the clinic was owned and operated by the school district but was not held open to the public for recreational use. The court therefore ruled that the district court was correct in finding that the Recreation Liability Statute did not serve as a bar to this action.

The supreme court held that the trial court erred in finding that the plaintiff was a licensee. Licensees are people who are on the premises with the express or implied consent of the owner for their own purposes rather than for the purposes of the owner. Invitees go onto the premises with the express or implied consent of the owner for purposes related to the business of the owner and for the mutual advantage of both parties. The court ruled that the plaintiff, participating in a school clinic sponsored by his high school athletic program, was clearly an invitee and not a licensee. With the plaintiff being an invitee, the trial court erred in applying the wrong standard of willful and wanton conduct in determining liability. The court remanded the case back to the trial court with instructions to apply the correct standard for ordinary negligence, the standard of the reasonable and prudent person.

On remand, the trial court took note of the original evidence that showed the district conducted yearly maintenance of the field in question. This maintenance consisted of spreading dirt, aerating the soil, planting seed, and erecting a snow fence around the field to keep people out when the field was not in use. With this maintenance program, there were only reports of scrapes and bruising due to the hard soil conditions. There were no reports of ruts alerting the school district to the potential for serious injury. The court therefore ruled for the school district while holding that the evidence did not support a claim of negligence in maintaining the fields.

On a second appeal to the supreme court, the trial court finding for the school district was upheld. The supreme court held that the plaintiff had the burden to prove that negligent maintenance of the field caused his injuries. The court took note that the plaintiff testified that he did not look down when his foot came down and could not point to the exact spot on the field where the accident occurred. The plaintiff, according to the court, did not know what caused his foot to catch on the ground and could only testify that he believed his foot was "caught." The court held that it could not rule the trial court erred as a matter of law in deciding that the plaintiff failed to prove the maintenance of the field was the proximate cause of the injuries.

Ackler v. Odessa Montour Central School District
663 N.Y.S. 2d 352

Issue: Dangerous condition of basketball court—Tape residue on floor following the removal of tape

Level of Court:	Supreme Court, Appellate Division
Date/State:	1997/New York
Decision:	Plaintiff/Affirmed

The plaintiff, a member of his school's basketball team, injured his knee as a result of a fall during practice. Evidence at trial indicated that, just prior to the start of practice, some tape used to mark some volleyball boundaries was removed from the floor. It was alleged that the tape left a residue nearly two inches wide on the floor after being removed. The plaintiff alleged that, while he was driving to the key, his foot stuck on the residue and caused him to fall forward and strike his knee. The district was charged with negligently creating a dangerous condition by improperly removing the tape that had been put on the floor to mark volleyball boundaries.

The trial court rejected the district motion for a summary judgment of dismissal. The appellate court upheld the trial court decision while dismissing the district claim that any residue that may have remained after the removal of the tape was too trivial to constitute a dangerous or defective condition of the facility. The court held that there was a question of fact to be decided by a jury as to whether the tape residue created a dangerous or defective condition. The court also rejected the district argument that it did not violate any rule or regulation or have actual or constructive knowledge of any dangerous condition. The court took note of the plaintiff's contention that the defendant affirmatively created the dangerous condition.

Simmons v. Smithtown Central School District
707 N.Y.S. 2d 646

Issue: Softball player slides into metal spike used to secure stationary base while using moveable bases for game

Level of Court:	Supreme Court, Appellate Division
Date/State:	2000/New York
Decision:	Plaintiff/Affirmed

The plaintiff was injured during a softball game when she slid into a metal spike positioned in the base path of the softball field. The spike was used to secure stationary bases. Evidence at trial indicated that the stationary bases were removed prior to the plaintiff's game and replaced by moveable "sack" bases.

The district filed for summary judgment while claiming that the plaintiff assumed the risk of injury by her voluntary participation in the game. The trial court denied the district motion, and the district appealed.

The Supreme Court, Appellate Division, held that there was no evidence establishing that the plaintiff was aware of the spike on this field, that softball fields in general are constructed with spikes, or of the risk of injury associated with such spikes. The court upheld the trial court denial of summary judgment.

NOTE: The embedded spike left behind after removal of the stationary bases clearly posed a risk to participants. The use of sack bases on softball and baseball fields raises another issue for athletic staffs. It is imperative that coaches and school districts be aware of guidelines and rules contained within state high school activity associations, the National Federation of High School Associations, and other governing bodies such as the Amateur Softball Association (ASA). All of these organizations have rules pertaining to field layout. Applicable rules for all three of the above organizations state that bases are to be secured. Bases can be secured using the spike and strap method, Hollywood bases, or breakaway bases. Throw-down or unsecured canvas bases are not appropriate for athletic competition or practice on skinned and groomed softball and baseball fields. The requirement of using secured bases should be prudently applied to games, practice scrimmages, and drills.

Eberhard v. St. Johns Public Schools

473 N.W. 2d 745

Issue: Disrepair of playground basketball hoop

Level of Court:	Court of Appeals
Date/State:	1991/Michigan
Decision:	Defendant/Affirmed

The plaintiff was injured while playing basketball on his elementary school playground when the basketball hoop fell and struck him. The trial court granted summary judgment for the school district, based on governmental immunity. The plaintiff appealed, claiming that the trial court erred in not applying the public building exception to governmental immunity.

The court of appeals affirmed the summary judgment of the lower court, holding that the public building exception to governmental immunity relates to dangers presented by the building itself and not to dangers presented on school property adjacent to the building.

NOTE: Although governmental immunity protected the district in this case, school districts need to exercise care in keeping outside facilities

and equipment in good repair. Those assigned responsibility for inspecting building facilities and equipment need to conduct regular inspections and make needed repairs before allowing equipment or facilities to be used. Because of the beating that outdoor backboards take from the weather, regular inspection of all hoops is crucial.

Physical educators need to assume some responsibility for this process in those areas in which they have expertise and in which they often conduct their activities. This case is but one more reminder of the need to not only conduct regular detailed inspections of all facilities but also the need for quick, visual checks of facilities and equipment by a supervisor before turning a group of children loose to play.

Morris v. Orleans Parish School Board

553 So. 2d 427

Issue: Failure to repair leaking drinking fountain

Level of Court:	State Supreme Court
Date/State:	1989/Louisiana
Decision:	Plaintiff/Reversed/Reversed

A 12-year-old elementary school student was injured when she slipped and fell on wet asphalt underneath and in front of a drinking fountain as she ran to get a drink. She fell on her right hip and, after two days of continuing pain, was taken to a hospital, where she was diagnosed as having a muscle strain. She returned to the hospital two days later as the pain intensified and she began to run a fever and suffered limited motion in her hip. She was diagnosed as having a hip infection, and surgery was performed to drain the joint and remove the infected substance. Her wound was left open for two weeks. She was released from the hospital five weeks after surgery and spent two weeks on crutches before she returned to school. She was retained one year in school, had a five-inch scar on her hip, and still experienced pain when she ran.

Suit was brought against the school board for negligently maintaining a dangerous condition on school grounds, causing the plaintiff's injuries. Evidence presented at trial indicated that the drinking fountain leaked and that the school board had received a request to repair worn gaskets on the fountain six months before the accident. The school board received a second request regarding the same fountain two months prior to the plaintiff's accident. This request came from a parent and was listed as a request for emergency repairs.

In addition to the parent's request, the board also received one from the school custodian three months before the fall, after he was unsuccessful in repairing it. He considered the request to be of an emergency nature because of safety concerns. Work on the fountain was not undertaken until two months after the plaintiff's fall.

The trial court awarded $48,538 to the plaintiff in finding the defendants negligent. The court of appeals reversed the trial court decision while holding that the plaintiff failed to prove that the fall caused the infection in her hip.

The state supreme court reviewed the following three issues upon granting a review of the court of appeals decision:

1. "Whether the school district was negligent;
2. If so, whether the fall caused the infection in her hip joint; and
3. If so, whether the awarded damages by the trial judge were proper."

The supreme court affirmatively answered the questions to all three issues and reversed the court of appeals while reinstating the judgment of the trial court.

NOTE: This case once again points out the necessity of making prompt repairs to defective or unsafe equipment and facilities. When defective or unsafe conditions are found to exist, immediate work orders for repair should be submitted. While awaiting repairs, students should not be permitted to use the unsafe equipment or facility unless the dangerous condition can be adequately cut off from their contact.

Goben v. School District of St. Joseph

848 S.W. 2d 20

Issue: Dangerous condition of property exception to immunity—Placing hurdle on concrete floor for practice, coercion

Level of Court:	Court of Appeals
Date/State:	1992/Missouri
Decision:	Defendant/Affirmed

The plaintiff, an overweight middle school student, was required by her physical education teacher to jump over a hurdle during her physical education class. Trial evidence indicated that the hurdle was placed on a concrete floor covered by tile. The plaintiff testified that she told the teacher she could not jump the hurdle and that if she attempted to jump it she would fall. The teacher allegedly required the plaintiff to jump it anyway. When the plaintiff attempted to jump the hurdle, she caught her foot on the hurdle, causing her to fall and suffer injury.

School districts in Missouri are protected by sovereign immunity. There is an exception to this immunity in the case of a dangerous condition of the property. Trial evidence indicated no defect in the

flooring or the hurdle. The plaintiff argued the dangerous condition was created by placement of the hurdles on the concrete floor and then requesting students such as the plaintiff to jump over them. The plaintiff based this argument on previous court decisions holding that a dangerous condition of property may be created by the positioning of various items on the property and not just by an intrinsic defect in the property.

The plaintiff argued that the school property was not intrinsically dangerous but became dangerous through the active negligence of the physical education teacher in urging a "reluctant, overweight teenage girl to jump a hurdle placed on a concrete floor."

The court of appeals upheld the trial court summary judgment for the school district. The court ruled that, in order to plead a dangerous condition of the property, the plaintiff was required to show that (1) a dangerous condition of the property existed; (2) the plaintiff's injuries were a direct result of the dangerous condition; (3) the dangerous condition presented a reasonably foreseeable risk of harm; (4) the physical education teacher negligently created the condition or the school district had actual or constructive knowledge of the dangerous condition.

The court held that the plaintiff failed to adequately plead that there was in fact a dangerous condition. Nothing in the evidence indicated anything wrong with either the floor or the hurdle itself. Rather, the plaintiff rested her argument on the decision of the physical education teacher to have an overweight girl jump a hurdle that was placed on a concrete floor. The court held that the injury resulted from the inability of the plaintiff to physically jump the hurdle rather than from a condition of the property.

NOTE: Although the court found that the physical education teacher's decision failed to create a dangerous condition of the property used for instruction, this case does raise issues relative to proper instruction and supervision. It is critical that physical educators analyze their lessons for not only effectiveness but for safety. Using a regular hurdle on a concrete floor raises safety concerns.

Hurdles with break-a-way straps are a good alternative, especially with inexperienced hurdlers in a physical education class. Physical educators are strongly cautioned against coercing students to perform once they have expressed legitimate concern for their safety. It is imperative that physical educators keep activities within the ability level of their students.

The facts of this case could clearly present a legitimate claim of negligent instruction and supervision in any jurisdiction not cloaked in sovereign immunity.

Shearer v. Perry Community School District
236 N.W. 2d 688

Issue: Equipment—Universal gym

Level of Court: State Supreme Court
Date/State: 1975/Iowa
Decision: Defendant/Affirmed

The plaintiff, a 14-year-old high school student, lost his front two teeth when a portion of a Universal Gym became disengaged from the rest of the apparatus and struck him in the mouth. The injury took place on March 25, 1971. On March 28, 1973, the plaintiff filed suit against the school district and both the manufacturer and distributor of the exercise machine for $25,000 in damages. The plaintiff alleged negligence, breach of implied warranty, and strict liability.

The district denied liability and later filed a motion for summary judgment, claiming the plaintiff had not complied with the notice requirement of the Tort Claims Act. The statutory notice requirement mandated that claims against public bodies be commenced within six months unless notice of claim was served within 60 days. If the notice was properly served, the law required that the action be commenced within two years. The plaintiff filed no such notice but asserted that the school district, through its agents and employees, had actual notice of the injury and that the time for bringing the action should be extended to two years pursuant to the above statute. The trial court granted summary judgment for the defendant, ruling that actual notice of the injury by the teacher and other agents of the school district and verbal notice to the superintendent did not fulfill the statutory requirements of notice.

The state supreme court affirmed the lower court decision, ruling that notice of the injury by the district, its agents, and its employees did not meet the statutory requirement of presenting written notice of a tort claim. The court also held that the notice statute did not violate the due process and equal protection clauses of the United States Constitution as claimed by the plaintiff.

The supreme court overruled its holding on the constitutionality of the above notice requirement eleven years later in the case of Miller v. Boone County Hospital, 394 N.W. 2d 776, 1986. In Boone, the court ruled that the statute of limitations that applies to the private sector would serve to prevent "stale claims" against the state and that to have a more stringent statute of limitations in the public sector denied equal protection and due process under the law.

NOTE: Teachers and coaches should always instruct their students and athletes to check each piece of apparatus or weight room equipment prior to using it. A quick check to make sure that barbell collars and all

handles, bars, or removable parts of stationary exercise machines are secure will substantially reduce the risk of accidents such as the one in this case. In addition to instructing students on the "how" and "why" of checking weight room equipment, physical educators and coaches should conduct a daily examination of weight room facilities, looking for worn, broken, or loose parts on all weight room equipment. Close supervision, adequate instruction, and close attention to the state of the weight room and all equipment within it are essential to the safe and prudent operation of this type of facility.

Byrd v. Bossier Parish School Board

543 So. 2d 35

Issue: Student manager injured while using power machinery

Level of Court:	State Court of Appeals
Date/State:	1989/Louisiana
Decision:	Defendant/Affirmed/Reversed

The plaintiff, a 14-year-old student athletic manager, suffered severe leg injuries when his leg entered an extractor he was operating. An extractor is a device used to wring clothes, much in the same way as the spin cycle on a washing machine. Suit was brought against the manufacturer, school board, coach, principal, and the district director of maintenance.

Evidence at the trial court indicated the plaintiff was a student manager for the basketball team. At the time of the accident, he was washing clothes in preparation for a 5:00 p.m. freshman game. The extractor, located in the varsity locker room, was equipped with an automatic braking system activated by a timer. It was also equipped with an interlock lever that could be used to break the electrical circuit and thereby cause the electrical brake to apply. The plaintiff's physical education instructor testified he never personally instructed the plaintiff on the operation of the extractor but had done so with other students and that they were instructed to never raise the lid while the tub was spinning. He also testified that he was aware of a problem with the extractor failing to stop and had communicated that to another coach in the school. The basketball coach testified he instructed two team managers on the operation of the extractor and directed them to instruct the other managers. The plaintiff indicated he was instructed on how to use the machine by one of the two managers and that he was told to never stick his hands or any other part of his body in the machine or it would "tear it off." There were signs in the locker room also informing the managers not to open the lid while the tub was spinning.

On the day of the accident, the plaintiff turned off the switch on the extractor and lifted the lid, but the extractor continued to run. He attempted

to use the interlock lever to stop the machine, but it failed to stop. The plaintiff claimed he attempted to use his foot on the lever in order to apply more pressure. He climbed on top of the machine to do so and did not remember anything after that. The defendants testified that, based on their discussions with the plaintiff, they believed he attempted to stop the tub with his foot. As a result of the accident, the plaintiff lost his leg.

The trial court dismissed the case against the manufacturer when it settled with the plaintiff out of court. The court granted motions for directed verdicts in favor of the coach, the principal, and the director of maintenance. It denied the motion for a directed verdict for the school board, and the suit continued. The court found the board negligent through the actions of the plaintiff's physical education teacher on the basis of his failing to supervise and instruct the plaintiff on the use of the machine. The court also found the plaintiff to be contributorily negligent, however, and recovery of damages was, therefore, barred.

The plaintiff appealed, and the court of appeals upheld, with dissent, the trial court finding of contributory negligence on the part of the plaintiff. It held that the plaintiff was aware of the dangers posed by the machine but nonetheless consciously undertook a dangerous act. The plaintiff argued that, even if he were contributorily negligent, he should not be barred from recovery because the district violated a state statute that prohibits minors under the age of 16 to be "employed, permitted, or suffered to work in, or about, power-driven machinery." The court refused to apply the statute to the educational setting and held that the plaintiff was not an employee of the district.

The court of appeals granted a rehearing and ruled that the statute in question recognized that minors under the age of 16 might not be able to act prudently in every situation and that this case was such a situation. It ruled that the school board and the manufacturer were joint tortfeasors and the school board would be held liable for half of the assessed damages to go along with whatever amount the plaintiff settled with the manufacturer for in their out-of-court settlement. The court assessed damages in the amount of $1,045,200.

Braun v. Board of Education of Red Bud Community Unit School District No. 132

502 N.E. 2d 1076

Issue: Willful and wanton misconduct—Failing to disseminate appropriate information about epileptic student and providing him with dangerous equipment

Level of Court:	Court of Appeals
Date/State:	1986/Illinois
Decision:	Defendant/Affirmed

The plaintiff received serious injuries when he fell 15 feet from a ladder to the gym floor while posting names on the scoreboard in the gymnasium in preparation for a basketball game. The plaintiff was the student manager of the basketball team and was directed by the coach to use a 20-foot extension ladder for the task because the scaffold used for this purpose was in the storage shed. Evidence presented at trial indicated that the boy was both epileptic and hyperactive and had a long history of seizures. His health status was part of his permanent record and was included on his health record. Testimony indicated that he had a seizure a week before the accident and that the basketball coach was told about the seizure. The coach was well aware of the boy's health record because he had engaged in several conversations with the parents and knew the boy quite well. The coach was under the impression that medication had the problem under control. On the day of the accident, the plaintiff blacked out and fell to the floor.

Illinois law holds teachers and school districts liable for willful and wanton misconduct. It provides immunity for ordinary negligence except in cases of providing dangerous equipment or maintaining unsafe facilities. The trial court found the teacher and school district not guilty of willful and wanton misconduct but found the district negligent in supplying the plaintiff with dangerous equipment as well as failing to supply safe equipment (scaffold) for the task. The jury, while finding the plaintiff 15% contributorily negligent, returned an award of $470,000 for the plaintiff. The trial judge entered a judgment notwithstanding the verdict on behalf of the defendants. The plaintiff appealed for all three charges in his original complaint.

The court of appeals ruled that the district had not failed to provide appropriate equipment. It held that a scaffold was available but that an employee, acting within a supervisory function, chose not to use it but to use a ladder instead. Because the necessary equipment was available, the decision not to use it in this case was subject to the more stringent liability standard of willful and wanton misconduct. The court held that the coach was not guilty of willful and wanton misconduct in having the plaintiff use a ladder because the coach was under the impression that the

plaintiff's condition was under control with medication and the plaintiff gave no indication that he was not to climb ladders. The court ruled that the "plaintiff's recent seizure record as known by the coach or other school personnel was not such that placing him on a ladder could be held as willful and wanton as a matter of law." The court therefore ruled that the jury decision relative to the issue of willful and wanton misconduct had to be upheld.

The plaintiff also contended that the district was guilty of willful and wanton misconduct for failing to disseminate appropriate information relative to his condition. The court reasoned that the verdict of the lower court indicated that the jury felt otherwise and that this holding was not erroneous as a matter of law. The appellate court held that any failure to disseminate information could not be held to be the proximate cause of the plaintiff's injuries because the basketball coach, by his own testimony, was obviously well aware of the boy's condition and more informed than any other employee of the school.

Justice Kasserman dissented from the majority ruling. In his dissent, he suggested that evidence presented at trial was such that a jury could properly conclude that the district had failed in its duty by not directing the scaffolding to be placed in an accessible location. Judge Kasserman stated that the danger posed by using a ladder for the directed task should have been recognized by school officials, particularly in view of the plaintiff's epilepsy. He concluded that the district was negligent under the real property exception to immunity and that the jury verdict for the plaintiff on this count of the complaint should have been reinstated.

NOTE: There is a clear responsibility to take into account the physical capabilities and health status of students before requiring their participation in any activity or in assigning them managerial tasks such as the one in this case. Although the defense successfully argued that the district's action failed to rise to the willful and wanton standard required for negligence under Illinois law, it is likely that a case of negligence could have been successfully argued in jurisdictions assigning liability for ordinary negligence. It is also conceivable that another court could have found the district's action to constitute willful and wanton misconduct.

Massie v. Pearson
729 S.W. 2d 448

Issue: Lack of ground fault interrupter on whirlpool modified by coach

Level of Court:	Court of Appeals
Date/State:	1987/Kentucky
Decision:	Defendant/Affirmed in part, reversed in part

The plaintiff brought a wrongful death suit against five construction defendants and the high school football coach as a result of the electrocution of her son in a whirlpool located within the athletic facilities of the school. Trial evidence established that the newly built school, 12 years old at the time of the accident, had passed inspection for its compliance with the 1965 National Electric Code in effect at the time construction was completed. Evidence established that four years after completion of the building, the school purchased a portable one-person stainless steel whirlpool. The newly hired football coach constructed a concrete block pool supplied with water from a shower and used the agitator and the control panel from the old stainless steel pool. The new pool was powered by a cord running from the pool to a control panel connected to an electrical outlet in another room.

The accident occurred as the plaintiff and another boy used the whirlpool after a baseball game. Trial evidence supported allegations of at least three faulty wiring conditions in the whirlpool component. Evidence indicated that the control panel was plugged into an improperly grounded outlet in violation of the 1965 electrical code in effect when the building was constructed. In addition, there was no ground fault interrupter as required by the 1975 electric code in effect at the time the football coach modified the whirlpool.

The construction defendants filed for and were granted summary judgment based on a five-year statute of limitations provision that provided that suit could not be brought for damages that occur more than five years after completion of construction. The trial court also granted summary judgment in the case against the football coach. The plaintiff appealed the lower court ruling while charging that the five-year statute of limitations provision was unconstitutional and that she was entitled to a directed verdict against the football coach.

The court of appeals ruled that the statute was unconstitutional but held that the plaintiff could not benefit from this finding because of a number of procedural errors or omissions on her part. The dismissal against the construction defendants was, therefore, upheld. The court went on to state that, even if able to benefit from the unconstitutionality of the statute of limitation provision, the claim against the construction defendants would have failed anyway because the evidence would not support that their negligence, if any, was a substantial factor in the boy's

death. The court held that, even though the electrical outlet was improperly grounded, no electrocution would have occurred had a ground fault interrupter been installed according to code when the whirlpool was modified 12 years later. The court ruled that the coach was negligent as a matter of law for not installing the ground fault interrupter and that the plaintiff was entitled to a directed verdict against the coach.

Upholding the summary judgment for the construction defendants, the court of appeals reversed the dismissal against the coach and remanded the case against the coach to the trial court for the determination of damages.

Wilkinson v. Hartford Accident and Indemnity Company
411 So. 2d 22

Issue: Facilities—Nonsafety glass in gym area

Level of Court:	State Supreme Court
Date/State:	1982/Louisiana
Decision:	Defendant/Affirmed/Reversed

The plaintiff's son, then a 12-year-old seventh grader, was injured when he fell through a plate glass window in the lobby outside of the gymnasium. On the day of the accident, the physical education class was involved in relay races on the east half of the basketball court, the side nearest to the lobby. The class was divided into six teams of five, with two teams competing at a time. At the conclusion of each race, the boys were instructed to sit along the east wall of the gym and wait for their next turn. The boys were permitted to go to the lobby to get water at the drinking fountains but were instructed not to linger or engage in horseplay. Following one of the races, the plaintiff's son, David, and the other members of his team went to the lobby to get a drink. While there, they decided to have David and another boy race to determine the order in which they would compete in the next relay. They were to race from the north water fountain to the south glass panel and back. There was a floor-to-ceiling glass panel at each end of the lobby. During their race, David pushed off the glass panel with both hands as he attempted to turn. He fell through the glass panel as it broke, suffered multiple cuts on his arms and legs, and was bleeding severely. The physical education teacher administered first aid, and David was taken to the hospital for further treatment.

The plaintiff filed suit on behalf of his injured son against the physical education teacher and school district for negligence. Evidence showed that a nonsafety glass panel at the other end of the lobby, identical to that through which the plaintiff's son crashed, had been broken several years previously when a visiting coach walked into it. It was replaced with safety glass.

The trial court rendered judgment for the defendant. In dismissing the plaintiff's suit, the court stated that there was no finding of negligence against the physical education teacher and that, although negligence on the part of the school district was shown, the plaintiff was denied recovery due to the contributory negligence of the injured boy. The court of appeals affirmed the trial court decision.

The supreme court framed the issues as follows: (1) whether the physical education teacher was negligent in his supervision of the class, (2) whether the school board was negligent in maintaining a plate glass window in the lobby of the gym, and, (3) if either or both were negligent, whether plaintiff's action was barred by the contributory negligence of the injured boy. The court supported the finding of the lower courts of no negligence on the part of the physical education teacher. As to the school board, the court ruled that the board had actual and constructive knowledge that the maintenance of plate glass in the lobby of the gym was dangerous and represented an unreasonable hazard to the children under its supervision. The board was, therefore, held liable. The court noted that in determining the contributory negligence of a 12-year-old boy, his conduct must be evaluated on the basis of his "maturity and capacity to evaluate circumstances and that he must only exercise the care expected of his age, intelligence and experience."

The court ruled that the plaintiff's son was not contributorily negligent. The court stated that the race in the lobby was merely an extension of the races being conducted in the gym and that the conduct of the injured boy was normal under the circumstances. The court held that the boy had no way of knowing that the glass panel contained plate glass rather than safety glass. The court ordered the case remanded to the court of appeals for the assignment of damages. On remand, the court of appeals awarded $20,560 in total damages.

Pell v. Victor J. Andrew High School and AMF, Incorporated

462 N.E. 2d 858

Issue: Equipment—Safety warnings not visible and lack of safety harness for gymnastics

Level of Court:	State Appellate Court
Date/State:	1984/Illinois
Decision:	Plaintiff/Affirmed

The plaintiff, a high school student, was permanently paralyzed when she severed her spinal cord as a result of a fall during the performance of a somersault off of a mini-tramp during her physical education class. The plaintiff filed suit against the school district, the high school, and the manufacturer of the mini-tramp, AMF, Inc.

Evidence and testimony showed that the mini-tramp was sold to the school district with a heat-laminated caution label attached to the bed that cautioned against misuse or abuse of the equipment and requested users to carefully read all instructions, inspect before using, and replace any worn, defective, or missing parts. The label further cautioned of the dangers of activities involving motion or height, use by untrained or unqualified participants, and unsupervised use. When a faculty member at the school assembled the mini-tramp, the bed was placed so that the warning label was facing down. Printed warnings on the frame were covered by the frame pads.

The plaintiff testified she took a few running steps up to the mini-tramp, jumped onto the bed, and began a somersault. Midway through her somersault, she felt a sharp pain in her knee, was unable to properly complete the skill, and collapsed onto a nearby mat. Two instructors were present at the time of the accident, with the closest one observing the somersault from a distance of 10 feet away. No safety harness or spotter was used.

The plaintiff settled out of court with the school district for $1.6 million, and the trial court found for the plaintiff in her case against AMF and awarded damages of $3.4 million. AMF appealed on a number of grounds. The appellate court ruled that warnings must be adequate to perform their intended function. The court stated that the warnings could be judged inadequate if they do not specify the risk presented by the apparatus, if they are inconsistent with how the apparatus would be used, if they do not provide the reason for the warning, or if they do not reach the foreseeable users. The court ruled that the evidence was sufficient to warrant a jury conclusion that the warnings were ineffective. In so ruling, the court stated the following:

1. "The warnings did not specify the risk of severe spinal cord injury which could result in permanent paralysis if somersaulting off the mini-tramp without a spotter or safety harness...
2. The warnings were inadequate because their location was inconsistent with the equipment's use...
3. AMF was familiar with recommendations by the [United States Gymnastics Safety] Association that warning labels should explain the reason for the warning and be clearly visible to a mini-tramp user."

The appellate court ruled against AMF's defense of contributory negligence, stating it is not available as a defense in strict liability tort action. It did note that "comparative fault is applicable to strict liability cases but only insofar as the defenses of misuse and assumption of risk are concerned." Comparative fault will not bar recovery but will operate to reduce the plaintiff's recovery by the plaintiff's degree of fault.

The court found no sufficient evidence to support either misuse or assumption of risk on the part of the plaintiff. The trial court's determination of negligence on the part of AMF was affirmed.

Egger v. St. Dominic High School

657 N.Y.S. 2d 85

Issue: Reduced size wrestling mat

Level of Court:	Supreme Court, Appellate Division
Date/State:	1997/New York
Decision:	Plaintiff/Reversed and dismissed

The plaintiff, a 16-year-old member of his school's wrestling team, was injured when he hit the hardwood floor of the gym while wrestling against a teammate with whom he was paired for practice. The mat being used for practice was smaller than regulation size and was surrounded by a hardwood floor.

The district filed for a summary judgment to dismiss the case on the grounds that the plaintiff had assumed the risk of wrestling. The court denied the district's motion, and the district appealed.

The appellate court ruled that, in New York, voluntary participants in interscholastic sports assume the risk of injury from injury-causing events that are known, apparent, or reasonably foreseeable consequences of participation. The court held that defendants are required to use ordinary care in protecting participants from unassumed, concealed, or unreasonably increased risks. The court held that being thrown to the floor was a foreseeable risk inherent to the sport of wrestling. The court reversed the trial court denial of summary judgment and dismissed the case.

NOTE: Although mat size alone cannot guarantee safety, coaches are cautioned against reduction in mat size, especially for competition. Factors such as the size and experience of the wrestler and the nature of the specific activity being engaged in will be weighed in determining the advisability of reducing wrestling area. Where reductions do take place, supervision needs to be close. Safety mats around the edges of the wrestling area are recommended for both practice as well as competition. The practice of "splitting" mats for competition should be avoided. Under no circumstances should a common boundary line be employed between two separate wrestling areas.

McGurk v. Lincolnway Community School District No. 210
679 N.E. 2d 71

Issue: Modification of football helmet

Level of Court: Court of Appeals
Date/State: 1997/ Illinois
Decision: Defendant

The plaintiff suffered a severe head injury during his participation in a school-sponsored football game. Evidence indicated that the plaintiff was supplied with a football helmet modified by the defendant. The modification involved changing the type of face guard. The district filed a motion for dismissal, claiming it was immune to suit under the Illinois Tort Claims Act. The trial judge denied the motion but allowed the district an interlocutory appeal to answer the question of whether the district supplying of equipment was covered by immunity.

The appellate court held that the provision of athletic equipment by the school district in this case was covered by immunity because the supply and use of particular equipment constitutes a discretionary act.

The dissenting opinion in this case stated that Illinois had long recognized the duty to provide safety equipment for athletic activities. The dissent stated that the furnishing of equipment was not discretionary but ministerial. The dissent recognized that a certain element of discretion exists in the performance of every ministerial act. The dissent reasoned that, because the district was required to provide helmets to football players, doing so was a ministerial act that must be carried out with ordinary care.

NOTE: Coaches and teachers are cautioned against any modification of factory-purchased equipment. This caution is extremely strong in the case of protective equipment. It is probably fair to assume that, in most jurisdictions, modification of equipment from factory standards would place defendants in a position difficult to defend.

Sewell v. Southfield Public Schools
576 N.W. 2d 153

Issue: Dangerous and defective swimming pool—Incorrect depth markings on side of pool and uneven bottom surface

Level of Court: State Supreme Court
Date/State: 1998/Michigan
Decision: Defendant/Affirmed/Reversed and remanded

Upon arriving for his high school swim class, the plaintiff and several of his classmates were instructed to swim five laps in the pool. Three

students dove into the pool near the area where the pool was marked five feet deep. The plaintiff followed his classmates in diving in and struck his head on the bottom of the pool. After hitting his head, the plaintiff climbed out of the pool and informed the student assistant of what had happened. The student assistant informed the instructor, who directed the plaintiff to change clothes and lie down on the couch in the office. Later, when the physical education department head told the plaintiff to get up and call his parents, the plaintiff discovered he could not move. The plaintiff had fractured his spine and required corrective surgery.

The plaintiff filed suit against the school district, the instructor, and the department head. He alleged that the district was negligent in maintaining a dangerous and defective building. Specifically, the plaintiff alleged that the pool had an uneven bottom surface, the depth of the pool along the sides was mismarked, and the district failed to post any warning signs against diving in the shallow end.

The trial court issued a summary judgment for the defendants, which was upheld by the court of appeals. Michigan law grants immunity to school districts, with a couple of narrow exceptions. One of those exceptions holds districts liable for injuries resulting from dangerous or defective facilities. The appellate court affirmed the trial court ruling that the plaintiff failed to allege facts that supported a finding that the pool itself was defective and unsafe for its intended purpose. The court ruled that the plaintiff's complaint was really one of negligent supervision.

The supreme court reversed the court of appeals and remanded the case back to the trial court for jury determination on the merits. The court took note that the plaintiff not only asserted but provided affidavits and letters in support of his claim that the pool depth markers were mismarked, that the pool floor was uneven, and that the pool was not five feet deep as it was supposed to be but as shallow as 4'3". The court also took note of expert affidavits that indicated the pool had a sharp up-slope from the sides of the pool where a dive might occur from and that the pool and its markings failed to comply with applicable statutes and rules. The court held that the plaintiff had adequately established questions of fact for a jury on whether the pool was a dangerous and defective facility subject to the building exception to governmental immunity.

NOTE: This case points out the necessity of insuring that facilities comply with industry standards not only in terms of construction but in signage as well. Because this case was to be decided on the buildings exception to governmental immunity, no discussion took place relative to the supervision issues in this case. In a jurisdiction not covered by immunity, this case would raise a number of questions and concerns.

Class rules and expectations would likely come into question. Were there rules about diving from the side of the pool? If the answer was yes, were those rules effectively communicated and consistently enforced?

The response to this injury by those in charge certainly raises concerns. When dealing with suspected head or spinal injuries, those in charge need to not only look at the symptoms that are being currently exhibited by the injured party but also to look very closely at the *mechanism* of the injury itself. Prudence dictates extreme caution when responding to head or spinal trauma. Head injuries should be assumed serious until proven otherwise. Parents should always be notified of head injuries, and medical evaluation should be sought if there is any question at all as to the seriousness of the injury.

Clark v. Sachem School District at Holbrook

641 N.Y.S. 2d 890

Issue: Angle of starting block in swimming mishap

Level of Court:	Supreme Court, Appellate Division
Date/State:	1996/New York
Decision:	Defendant/Affirmed

The plaintiff, a 10th-grade member of the varsity swim team, was injured after striking his head on the bottom of the pool after executing a racing start from the racing blocks located at the shallow end of the pool during swim practice. The plaintiff's testimony at trial indicated that, while he was standing in the start position on the blocks, he was startled by a noise that sounded like a whistle. He testified that he began the starting motion, believing the noise was the start signal. When he realized the noise was not his coach's whistle, he hesitated and started to pull up but then heard the start whistle. Before returning to the proper starting position, he executed his dive.

The plaintiff charged that the district was negligent in locating the starting blocks at the shallow end of the pool. The school district moved for summary judgment, stating that the plaintiff assumed the risks associated with competitive swimming and that the evidence failed to support that the placement of the starting blocks caused the plaintiff's injuries.

In argument against the summary judgment, the plaintiff then alleged that the slope of the starting blocks exceeded the 10-degree angle permitted by recognized swimming rules, procedures, and standards and that this was a substantial factor in causing his injuries. The school district countered with an affidavit from the national governing body for swimming stating that the standard and rule relative to the slope of starting blocks in swimming had nothing to do with safety but with continuity in the conditions for competition throughout the swimming world.

In noting the undisputed testimony showing that the plaintiff reacted to a noise he initially thought was the start signal and then, after hearing his coach's whistle, dove into the pool before returning to a proper starting stance, the court held that he made a conscious choice to dive.

The court held that it was his choice to dive without returning to a proper stance, not the angle of the starting blocks, that caused his injuries. The court held that students who voluntarily engage in extracurricular sports have consented by virtue of their participation to assume known, apparent, or reasonably foreseeable risks in the activity. Provided those risks are not unreasonably increased through improper instruction and supervision, the assumption of risk doctrine will serve as a bar to recovery. Based on the assumption of risk doctrine, the appellate court dismissed the plaintiff's action.

Lanning v. Anderson
921 P. 2d 813

Issue: Athlete struck by discus—Recreational use exception to liability

Level of Court:	Court of Appeals
Date/State:	1996/Kansas
Decision:	Plaintiff/Affirmed in part, reversed in part

The plaintiff had just completed relay practice with other members of his middle school track team and had been dismissed to the locker room by his coach. The plaintiff and some other members of the team were walking on a sidewalk that cut through the middle of the school playground. Discus throwers were practicing nearby. They were throwing from home plate of the baseball field toward the playground.

The athlete throwing the discus at the time of the accident used the spin technique requiring that he start his throw with his back to the landing area. Those waiting for their turn to throw allegedly had the responsibility for making sure that the throwing area remained clear. A throw was released while the plaintiff and his teammates were walking on the sidewalk in line with the landing area. The discus throwers yelled "heads" when they noticed the plaintiff, but the plaintiff was unable to retreat in time and was struck in the head. The discus had been thrown from a distance of approximately 80 feet.

As a result of the accident, the plaintiff suffered a serious head injury resulting in some cognitive damage. Suit was filed against the coaches and the school district. The defendants filed a motion for a directed verdict on the grounds that there was insufficient evidence to go to the jury on the question of gross and wanton negligence, which they claimed was required in this case because of the recreational use statute. The recreational use statute provided an exception to the Kansas Tort Claims Act, which required a showing of willful and wanton conduct where injuries result from the recreational use of public property. The motion for a directed verdict was denied, and a verdict was returned in favor of the plaintiff.

The defendants appealed the lower court ruling against the directed verdict. The plaintiff filed a cross appeal on the application of the

recreational use law, claiming that the recreational use statute did not cover organized competitive athletics. The plaintiff contended that the defendants should be held to the standard of ordinary reasonable care.

The court of appeals held that the recreational use statute did apply to the track practice. The court relied on previous supreme court decisions that refused to make a distinction between unorganized and organized activities on the land.

The court ruled that the behavior of the coaches and school district did not rise to the level of willful and wanton and therefore held that the directed verdict should have been granted. In reaching its decision, the court noted that, in order for the conduct to be willful and wanton, the coaches had to realize the imminence of danger and then disregard an obvious risk that was so great as to make it highly probable that harm would follow. In noting that practice had been held at this site on at least 10 occasions and that there had been no previous incidents or close calls, the court held that there was no evidence to indicate that the coaches were aware of any imminent danger.

NOTE: Although held to not constitute willful and wanton behavior in this case, any decision to have students throwing implements such as shots, discs, and javelins towards traveled pedestrian or play areas will open up the charge of ordinary negligence. Both the layout and supervision of the throwing area were suspect in this case. Careful consideration needs to be given in arranging practice areas to accommodate not only the practice but also the safety of others using the property.

In Summary

The Reasonably Prudent Physical Educator or Coach:

1. Does not allow students to use any equipment prior to receiving instruction on the safe use of that equipment.
2. Regularly inspects equipment, facilities, and grounds used by students. Does quick visual check daily and a detailed inspection monthly.
3. Keeps all inspection reports on file.
4. Reports all hazardous facility or grounds conditions immediately and refrains from using hazardous areas until those conditions are remedied.

Continued

5. Does not use defective, overly worn, or broken equipment.
6. Refrains from using equipment for purposes other than those for which it was intended.
7. Provides all necessary safety equipment in those activities where appropriate, such as soccer, hockey, softball, football, in-line skating, rock climbing and gymnastics.
8. Purchases equipment of high quality; does not supply equipment that is dangerous for its intended use.
9. Does not modify factory-purchased equipment.
10. Properly secures and/or stores all equipment when not in use.
11. Does not turn an otherwise safe facility into a dangerous one by improperly arranging equipment and materials for student or athlete use.
12. Does not use common boundary lines but provides a safe buffer zone between all play and competition areas and between play areas and all obstructions.
13. Follows all school, district, and activity association rules and guidelines relative to equipment use.
14. Instructs students and athletes to also check for common safety hazards involving equipment, facilities, and grounds.
15. Posts appropriate warnings and rules relative to equipment and facility use.
16. Disinfects all equipment and facility surfaces whenever exposure to possible blood-borne pathogens and other communicable diseases occurs.
17. Exhibits caution in the use of homemade equipment.
18. Keeps locker rooms clean and orderly.

Administration of First Aid

The physical education and athletic settings are relatively safe, but they are not risk free. Any time you have participants moving and physically interacting, particularly when using equipment, the risk of injury will exist. Physical education and athletic staff should possess an understanding of the injuries common to the activities they teach and coach as well as the first aid required for those injuries. First aid is temporary emergency care, not treatment. It is important that physical educators and coaches not put themselves in a position of diagnosing or treating injuries and/or illnesses. The immediacy as well as the appropriateness of specific first aid measures are issues that have been dealt with in court. The moving of injured students and athletes is another issue that has raised concerns.

Head injuries represent a special problem for physical education and athletic staff. All too often, teachers and coaches put themselves in a precarious position by not taking head injuries seriously. All head injuries should be considered serious, and whenever any doubt exists as to the extent of injury, medical help should be summoned immediately. In addition to symptoms presented by an injured student or athlete, a commonsense look at the mechanism or cause of the injury should provide some clue as to whether or not immediate medical help is prudent. In any case, parents should be notified of all head injuries, whether they appear serious or not.

Physical education and athletic personnel should assume an active role in helping to develop a detailed building plan for dealing with serious injuries. The plan should be clearly communicated and accessible in written form to all staff and should outline guidelines and protocols to be followed as well as all staff responsibilities.

Coaches should maintain an accurate team roster that includes both home and parent work phone numbers as well as the phone numbers of emergency contacts. This roster should be in the coaches' possession at all game and practice sessions. Whenever traveling out of town for contests, coaches should have in their possession an emergency treatment authorization form for each athlete. This form should include all pertinent information required when seeking medical treatment. It should include student name, family physician, insurance information, allergies if they exist, current medication being taken, and parents' names and signatures.

Due to the increased opportunity for injuries to occur in the physical education and sport setting, physical education and athletic departments, together with the health services coordinator, should develop guidelines for dealing with blood-borne pathogens. This is not only important for self-protection during the administration of first aid but also to prevent the potential spread of blood-borne pathogens among other class or team members due to a contaminated environment after injuries have occurred.

Although charges of improper first aid are not nearly as frequent as those for improper instruction and supervision, the following court cases point to the importance of observing the preceding guidelines.

Mogabgab v. Orleans Parish School Board
239 So. 2d 456

Issue: Improper first aid for heatstroke

Level of Court: State Court of Appeals
Date/State: 1970/Louisiana
Decision: Dismissed/Reversed

The parents of a deceased high school student brought a wrongful death suit against the school board, the head and assistant football coaches, the principal, the superintendent, the insurance company, and the supervisor of the health, safety, and physical education division.

The plaintiffs alleged negligence in failing to provide all necessary and reasonable safeguards to prevent injury and illness to members of the football team and negligence for improper first aid given to their son. The boy became ill at football practice around 5:20 p.m. and was put on a school bus and returned to the high school shortly thereafter. Suspecting heat injury, staff laid the boy on the floor and covered him with a blanket. Unsuccessful attempts were made to give him salt water. His mother was called at 6:45 p.m., and she called a doctor, who arrived at 7:15 p.m. The boy was immediately taken to a hospital for treatment, but his condition worsened, and he died at 2:30 a.m. The cause of death was listed as heatstroke.

A doctor who treated the boy testified that covering the victim with a blanket was the improper thing to do and that, time being of the essence in cases of heatstroke, quick treatment was necessary. The doctor said that had he received immediate and proper first aid, his death would have been much more unlikely.

The trial court dismissed the case without a written reason. The court of appeals reversed the dismissal, ruling that the two coaches who were present were negligent in denying the boy immediate medical assistance and in applying improper first aid. The court held that the evidence supported the premise that it was more likely than not that the boy would have survived with reasonable and prompt medical attention. The court ruled that the evidence failed to support claims against the other defendants and held the two coaches and school board negligent. The court awarded each of the parents $20,000 plus medical and funeral costs.

NOTE: Although the discussion here centered on the issue of improper first aid given to a heatstroke victim, it raises another pertinent issue for physical educators and coaches. Teachers and coaches who conduct

activities in hot climates need to have clear guidelines for their practice or activity sessions that are designed to reduce the risk of heatstroke occurring in the first place. The severity of a workout, the temperature, the number of rest breaks, and the availability of water are all factors that need to be balanced in planning for and conducting activity sessions in hot weather.

Burden v. Wilkes-Barre Area School District

16 F.Supp. 2d 569

Issue: Football player dies from respiratory abnormalities following practice on hot and humid day

Level of Court: U.S. District Court
Date/State: 1998/Pennsylvania
Decision: Defendant

The plaintiff, the father of a deceased high school football player, brought a federal civil rights action against the school district. The plaintiff stated that his son was involved in a morning practice during which the temperature ranged from the high 80s to the low 90s. He alleged that, during the practice, his son experienced leg cramps. He was removed for a brief rest and then was returned to the practice field. After practice, the boy was instructed by the coach to drink fluids and eat a banana but was not instructed to seek any medical attention. Another practice session was held in the afternoon. The boy again experienced leg cramps and was taken off the field on two occasions, returning each time after a short rest. He collapsed later in the evening after returning home and was rushed to a hospital. He was suffering with respiratory difficulties that accompany clinical fasciolar depletion. He died as a result.

The father claimed that the school district decided against hiring an athletic trainer to care for the health and safety needs of the student athletes even though they knew that participants in high school athletics suffered injuries throughout the year and that other school districts had hired athletic trainers for this very reason. The plaintiff alleged that, in failing to hire a certified athletic trainer, the school district had violated his son's constitutional rights to life and liberty under the 14th amendment to the U.S. Constitution.

The court ruled that the plaintiff failed to adequately plead allegations that the district had established a policy against the hiring of trainers. It further held that the district had no affirmative duty to provide a trainer. The court stated that, although the school district could have chosen to hire a trainer, which may or may not have averted the boy's death, no constitutional obligation arose out of the district's failure to provide a trainer.

Welch v. Dunsmuir Joint Union High School District
326 P. 2d 633

Issue: First Aid—Improperly moving injured student

Level of Court:	Supreme Court, Appellate Division
Date/State:	1958/California
Decision:	Plaintiff/Affirmed

The plaintiff was injured during a football scrimmage with another high school. After being hit while carrying the ball, the plaintiff fell forward, and a tackler fell on top of him. After the hit and tackle, the plaintiff was unable to get to his feet. The coach suspected a neck injury. He had the plaintiff attempt to grip his hand, which he was able to do. Eight team members then moved the plaintiff off the playing field. A team doctor was present but did not come out onto the field. After arriving at the sideline, the plaintiff was no longer able to move either his hands or feet. He is now a permanent quadriplegic.

Expert testimony indicated that, given the existing circumstances, it was probable that additional spinal cord damage occurred after the initial injury as a result of improperly moving the plaintiff. The coach was found negligent for not waiting for the doctor before moving the injured student, and the doctor was found negligent for failing to act promptly. The court awarded $325,000 in damages.

The defendants appealed the lower court decision on a number of procedural grounds. The Supreme Court upheld the finding of negligence but amended the damages to $207,000.

NOTE: Even though this case is quite old, it provides a sound warning to a continuing problem in sports. In the absence of trainers or doctors, coaches sometimes tend to be in too big of a hurry to move injured players off to the sidelines of a playing field or court so that the game or contest can continue. Whenever suspecting neck or head injuries, coaches should proceed extremely cautiously because errors in judgment can have catastrophic consequences, as in this case. Whenever possible, professional help should be immediately sought and players moved only after they have been properly immobilized.

Halper v. Vayo
568 N.E. 2d 914

Issue: Wrestling coach goes beyond first aid—
Willful and wanton conduct

Level of Court:	Court of Appeals
Date/State:	1991/Illinois
Decision:	Defendant/Affirmed in part, reversed in part, and remanded

The plaintiff, a high school wrestler, injured his knee during wrestling practice at his high school. The plaintiff brought suit against both the coach and the collegiate wrestler he was wrestling. The plaintiff claimed the coach negligently undertook a medical assessment of his knee, including pulling and manipulating the knee. The plaintiff alleged that, after the assessment, the coach had him wrestle against another wrestler, who was a college champion. The plaintiff argued that, due to the negligent treatment of his injury, failure to seek medical assistance for the injury, and then requiring him to wrestle the college wrestler, the coach caused him to suffer further injury to the leg. The plaintiff's injuries required surgery to repair ligament damage.

The trial court dismissed the case, basing its ruling on the statutory immunity of the coach for ordinary negligence and on the one-year statute of limitations for filing suit. The plaintiff filed an amended complaint alleging willful and wanton conduct on part of the coach. The trial court denied the plaintiff's motion for the court to reconsider and motion for a leave to file the amended complaint. The court ruled that, because the complaint was barred by the statute of limitations, no amendment could cure the defect of the original complaint.

The Appellate Court of Illinois ruled that the one-year statute of limitation did not apply to minors. The court held that minors were entitled to two years in which to file suit. The court ruled that in order to plead a cause of willful and wanton conduct on the part of the coach, the plaintiff had to allege that the coach either intentionally injured him or acted in a reckless disregard for his safety. The amended complaint alleged that, with no medical training, the coach attempted to pull and manipulate the leg following the plaintiff's initial injury and then allowed him to practice with a much more experienced collegiate wrestler, both of which caused further injury to the leg. The plaintiff argued that the care and treatment of his leg by the coach went beyond first aid and was prohibited by school athletic department policy. The plaintiff further alleged that the coach failed to call the plaintiff's parents or a local rescue squad after he suffered further injury.

The appellate court held that the plaintiff's allegations, if true, would be sufficient to state a cause of action against the coach for willful and

wanton misconduct. The trial court dismissal on behalf of the collegiate wrestler was upheld, and the dismissal of the complaint against the coach was reversed. The case against the coach was remanded to the trial court for a determination on the merits of the case.

Myers v. Troup Independent School District

895 F. Supp. 127

Issue: Player knocked unconscious and later re-entered into high school football game

Level of Court: U.S. District Court
Date/State: 1995/Texas
Decision: Defendant

The plaintiff, a high school senior football player, was struck in the head and knocked unconscious for several seconds during a varsity football game and was taken to the sidelines. The school district did not, as a practice, secure the services of a physician for its football games. Five minutes after being knocked unconscious, the plaintiff was sent back in to play the remainder of the game without any examination by a physician. One week later, after suffering dizzy spells at practice, the plaintiff collapsed during a pregame warm-up. He was taken to a hospital, where cranial surgery was performed to remove a subdural hematoma. The plaintiff also suffered a stroke and underwent a tracheotomy. As a result of his injuries, the plaintiff suffered nerve and muscle damage to one eye, diminished mental capacity, and impaired motor skill functioning.

The plaintiff brought suit against the school district, school board, and football coaches under 42 U.S.C. section 1983, alleging violations of Due Process and Equal Protection under the 14th Amendment to the U.S. Constitution. Negligence was also charged under the Texas Tort Claims Act.

The Federal District Court ruled that, in order to properly state a section 1983 claim alleging due process violations, a plaintiff must show a violation of rights secured by the constitution or the laws of the United States and demonstrate that the deprivation of these rights was committed by a person acting under the authority of state law. The court held that nothing in the language of the Due Process Clause itself requires the state to protect the life, liberty, and property of its citizens against the actions of other parties unless the State has made an affirmative act restraining the individual's freedom to act on his own behalf. Such an affirmative act would serve to establish a special relationship between the parties. The plaintiff argued that he participated in football to meet his physical education requirements for graduation and therefore a special relationship existed. The court, in noting evidence that indicated the plaintiff had met his physical education requirement by the end of his sophomore year,

dismissed this argument. The court held that the plaintiff's claims were based in negligence and did not raise constitutional issues.

The Federal District Court ordered that the school district's motion for a summary judgment be granted with respect to the Section 1983 claim. The court dismissed without prejudice the state law claim while holding that the federal court could not rule on the state claim after denying the federal claim. The question of negligence was left for the state courts to decide.

NOTE: The federal claim in this case was based on the failure of the school district to provide a physician to insure that injured athletes were properly evaluated before allowing their return to play in order to protect their rights to life, liberty, and property. Although dismissed on constitutional grounds, the case raised a number of serious issues relative to negligence. Severe injury is certainly no stranger to the football field. Detailed policies and procedures for the care and follow-up of injured athletes must be developed by the athletic department administration. These policies and procedures must be effectively communicated to all those responsible for carrying out the school athletic programs.

Athletic departments would be well advised to secure the services of a physician or a certified athletic trainer on their sidelines for all games. Injured athletes should be evaluated before their return to any game is allowed. All head and neck injuries should be treated as serious, and no return to play or practice should be allowed prior to obtaining medical clearance. The fact that the plaintiff in this case was unconscious for several seconds, was not evaluated by any trained medical personnel, was allowed to return to play after only five minutes, was not closely observed by any trained personnel, and was allowed to return to practice following the game despite presenting symptoms of head trauma, raises not only questions of negligence but serious questions of willful and wanton misconduct on the part of the coaches and the athletic department.

Jarreau v. Orleans Parish School Board
600 So. 2d 1389

Issue: Failure to refer football player for medical evaluation after suffering injury and continuing to play him

Level of Court: Court of Appeals
Date/State: 1992/Louisiana
Decision: Plaintiff/Affirmed in part, amended in part

The plaintiff, a member of his high school football team, received injuries to his wrist during a football game when it was struck by the helmet of another player. Despite some swelling and continued pain affecting his play, the coaches did not withhold him from any participation.

At the conclusion of the season, and at the request of the plaintiff, the team trainer referred him to an orthopedic specialist for evaluation. The exam revealed that the plaintiff had suffered a fracture and that a cyst had formed, which affected the healing. Treatment required two bone graft surgeries and immobilization by cast for a full year. Even after therapy, the plaintiff was left with permanent limitations in his wrist movement. The doctor testified that, if the cyst developed as a result of nonunion of the bone, a delay of treatment of the injury likely exacerbated the injury.

The trial court ruled that the coaches and school district were negligent in not referring the plaintiff for medical evaluation. The defendant appealed the lower court ruling, claiming that the trial court erred in finding causation between the defendant's conduct and the damages suffered by the plaintiff. This argument was based on the doctor's testimony that the cyst could have been present prior to the fracture and could have been a factor in the fracture occurring. The district further claimed that they owed no duty to refer the plaintiff for medical treatment.

The court of appeals held that the injury is presumed to have resulted from the accident if before the accident the plaintiff was in good health but after the accident symptoms of the disabling condition appeared. The court agreed with the school district that the coaches could not be expected to diagnose the extent of the plaintiff's injury. However, the court ruled that, with continued complaints of pain and swelling, reasonable and prudent practice dictated that the coaches recognize their limitations in this regard and seek medical advice rather than simply ignoring the symptoms and continuing to play the plaintiff.

Although upholding the trial court finding of negligence on behalf of the school district and its coaches, the court of appeals also found that the plaintiff contributed to his own injuries. Noting that the plaintiff was 18 years old, the court found that he had some obligation in withholding himself from participation. The court held that the plaintiff's

responsibility was one third. Applying the principles of comparative negligence, the court amended the assigned damages accordingly.

O'Brien v. Township High School District 214
415 N.E. 2d 1015

Issue: First aid delegated to another student

Level of Court:	State Supreme Court
Date/State:	1980/Illinois
Decision:	Defendant/Affirmed in part and reversed in part/Reversed and remanded

The plaintiff brought suit against the school district and two teachers, as well as a fellow student. The plaintiff had a pre-existing condition of septicemia in his left knee. The injury, which was received off school property in an activity unrelated to school, was treated by another student at the direction of the plaintiff's teacher. The plaintiff alleged that the "medical and surgical" treatment of the injured knee by the student was given negligently and without parental consent and resulted in severe and permanent injury. The plaintiff also alleged that the defendants were willful and wanton in their conduct.

The trial court dismissed the case against all defendants, based on their claim to immunity. On appeal, the court of appeals held that teachers act "in loco parentis" and are generally only liable for willful and wanton acts. The court concluded that their actions did not rise to the willful and wanton standard. The court ruled, however, that the district was not protected by governmental immunity in this case. The court stated that school districts are liable for willful and wanton misconduct when it involves an injury that arises out of the personal supervision and control of a student by a teacher or the maintenance of a "sound learning atmosphere." The court concluded that the broad discretion granted in the areas of supervision and discipline is not required in situations where medical treatment is provided. The court ruled that public policy dictated that any such treatment be competently rendered. The court upheld the dismissal of willful and wanton misconduct charges against the teachers but reversed the dismissal of the negligence charges against the school district.

The school district appealed to the supreme court, which concluded that the school code and immunity statute did not provide immunity to the district and it employees under the circumstances presented by this case. Although recognizing that districts and their employees stand "in loco parentis" relative to their supervision, discipline, and conduct of the school program, the court held that teachers are not privileged to do everything that a parent may do. The court ruled that the seeking of medical treatment for the plaintiff was the responsibility of the parents and outside of the supervisory responsibility of the teachers. The court

held that the teachers in this case could be held liable for negligently "prescribing or administering treatment which causes injury." The supreme court upheld the court of appeals ruling on the issue of ordinary negligence on the part of the school district and reversed the dismissal of the willful and wanton misconduct complaint against the teachers. The judgment of the trial court was therefore reversed in its entirety and the case remanded to the trial court for a new trial on its merits.

Barth v. Board of Education of City of Chicago
490 N.E. 2d 77

Issue: Delay in medical treatment for head injury

Level of Court: Court of Appeals
Date/State: 1986/Illinois
Decision: Plaintiff/Affirmed

The plaintiff, then an 11-year-old sixth grader, received a head injury as a result of a collision with another boy during a morning recess kickball game supervised by the physical education teacher. After falling to the ground, both boys were assisted off the field by the physical educator. The plaintiff felt sick to his stomach and dizzy. A teacher aide escorted the boys to the principal's office, where they arrived approximately five minutes after the accident. Both boys sat on a bench, with the plaintiff still crying, holding his head and stomach. A red mark became noticeable on the side of the plaintiff's head where the blow occurred.

Five minutes after the boys arrived in the office, the secretary called the homes of both boys to inform the parents of the accident. Unable to reach the plaintiff's mother at home, the secretary called her at work and left a message for her to call the school. The plaintiff's mother returned the call approximately 15 minutes later, by which time the plaintiff's color was bad and his eyes were glassy. Told that he had injured his head and appeared to be sick, the mother ordered the secretary to take the boy to the hospital and that she would arrive in approximately an hour from work and that the boy's brother would meet him at the hospital. The secretary then left an aide in charge while she went to find the assistant principal and inform her of the accident and her actions. The boy was now nauseous and had vomited three times. The secretary called 911, now 25 minutes after the accident, and requested an ambulance.

By the time the assistant principal returned to the office, the boy had lost color, was nodding his head up and down, and complained of being tired. When the ambulance had not arrived 30 minutes later, 911 was called again. After being told the message was recorded and being handled, the school waited 15 more minutes and still no ambulance. A third call to 911 was made, and the assistant principal requested to talk to the fire department directly. An ambulance was dispatched within a

couple of minutes and arrived at the school two minutes later. The ambulance had been parked at the hospital, which was directly across the street from the school. The boy arrived at the hospital an hour and a half after the accident. The boy was transferred to another hospital one hour and 20 minutes later and was operated on shortly after arrival to remove a blood clot from the brain.

The doctor testified he removed a hematoma the size of an orange from the top of the boy's head. He also testified the hour delay in transporting the boy to the hospital allowed the hematoma to "grow from the size of a walnut to the size of an orange." If the hematoma had been removed an hour earlier, the doctor testified, the boy probably would have had a hospital stay of a mere 7-10 days. "Six years after the accident, the plaintiff's left side was still severely weak, he required a cane, his intellectual function was impaired, and he experienced severe headaches."

Under Illinois law, teachers and school districts are immune from liability for actions within the scope of their employment unless those actions constitute malfeasance or willful, wanton misconduct. The trial court found the district, the city, and its 911 operator guilty of willful and wanton misconduct. The appellate court upheld the trial court judgment, and the plaintiff was awarded $2,550,000.

NOTE: The message presented by this case is clear. All head injuries should be considered serious unless shown to be otherwise. Where a serious head injury is suspected, prompt medical attention is absolutely essential. Any prolonged wait invites disastrous and sad consequences.

Wightman v. Town of Methuen
526 N.E. 2d 1079

Issue: Failure to seek immediate medical attention

Level of Court:	Court of Appeals
Date/State:	1988/Massachusetts
Decision:	Defendant/Affirmed

The plaintiff, a second-grade student, was injured on the school playground before the start of school. An older boy picked him up by his legs and spun him around in the air. After repeatedly asking the older boy to stop, the plaintiff was thrown to the ground. The plaintiff went to two nearby staff members, crying and in pain. The two staff members sent him on to class without examining his arm. The plaintiff's classroom teacher sent him to the nurse's office when it became obvious he was in pain and unable to participate in the class activities. No nurse was on duty. The physical education teacher applied first aid, and the parents were called. The plaintiff had suffered multiple fractures of his right arm, which

required surgery. The plaintiff filed suit, charging inadequate supervision and failure to seek immediate medical attention. The defendant moved for summary judgment, claiming it was exempt from liability under the discretionary function exemption of the Massachusetts Tort Claims Act. Summary judgment was granted for the defendant, and the plaintiff appealed.

The appellate court upheld the lower court decision. It ruled that sizing up the gravity of a school yard fight, deciding how to deal with it, and maintaining school discipline involves "judgment, experience, and intuition which is the sum of experience" and requires broad discretion. The court held that management of student fights and student discipline falls within the discretionary function exception of the Tort Claims Act and that the exception applies even where there has been abuse of discretion.

Although noting that a failure to seek immediate medical attention does not fall within the discretionary function exemption to liability, the court ruled that this claim of the plaintiff failed because it was not properly presented. The Massachusetts Tort Claims Act requires all claims to be presented in writing to the executive officer of the public employer within two years of the incident giving rise to the claim before a civil action can be initiated. The letter submitted by the plaintiff to school officials made no mention of the failure to seek immediate medical attention. It addressed only the issue of supervision.

NOTE: Even if the required written notice of claim had been properly submitted, the plaintiff in this case would have had to show a causal connection between the school's failure to seek immediate medical attention and his ultimate injuries. The fractures were due to his fall. To collect any damages because of the school's negligence in not seeking immediate medical attention, evidence would have to show that the plaintiff's injuries were aggravated or made worse by the school's actions after the accident had occurred. No such evidence was submitted. It is important to note that it is not sufficient to merely show that a negligent act occurred. To successfully collect damages in court, a plaintiff must show a causal connection between the alleged act and the ultimate injury.

Peck v. The Board of Education of the City of Mount Vernon
283 N.E. 2d 618

Issue: Immediacy of first aid

Level of Court:	State Court of Appeals
Date/State:	1972/New York
Decision:	Plaintiff/Defendant/Defendant

The plaintiff's son died as a result of accidentally being kicked in the head during his physical education class. Suffering a headache and dizziness, the boy was checked by the school nurse. He had not lost consciousness, and the nurse found no pupillary changes. Within 50 minutes of the accident, the boy and a friend left school to see the boy's physician. The physician sent him to the hospital, where he was admitted two hours after the accident. X-rays did not disclose the skull fracture and blood clot, which ultimately took the boy's life.

The neurosurgeon who treated the boy testified that an earlier operation could have saved the boy's life, but he was not certain as to how much sooner would have been necessary. He also testified that headache and dizziness were both "soft" symptoms of brain injury and that the boy did not display any critical signs of severe head trauma.

The trial court ruling for the plaintiff was reversed by the Supreme Court, Appellate Division. The court of appeals upheld the reversal while ruling that the evidence failed to prove any unreasonable delay of medical attention by the school district.

NOTE: All head injuries should be taken seriously. Where head injuries occur, parents should always be notified. Failure to error on the side of caution can often result in tragic consequences when dealing with head injuries. Teachers and coaches should consider the mechanism of injury as well as the symptoms when picking a course of action relative to first aid for head injuries. Prudence dictates observation and notification of parents, at a minimum.

Gara v. Lomonaco
557 N.E. 2d 483

Issue: Refusing to allow injured student to see nurse and improper matting for jazz dance

Level of Court:	State Appellate Court
Date/State:	1990/Illinois
Decision:	Defendant/Affirmed

The plaintiff was injured in her physical education class while participating in jazz dance, which was being conducted on the wrestling mats. The mats being used were not taped down and overlapped. While performing, the plaintiff caught her foot between two of the mats and fell, injuring her ankle. The physical education teacher did not examine the ankle and allegedly refused to allow the plaintiff to be excused to see the nurse. During her next two class periods, the plaintiff again sought permission to see the nurse but was denied permission to see the nurse by her teachers. It was later discovered that the plaintiff had a fractured ankle.

The district filed a motion for dismissal, alleging that the complaint failed to state a proper cause for action. The district's request was based on their claim of governmental immunity under Illinois statute. The trial court granted the district's motion, and the plaintiff appealed.

The appellate court upheld the lower court ruling while holding that the teacher's decision to not allow the plaintiff to see the nurse fell within her supervisory duty and was, therefore, immune to suit unless it could be shown that her actions constituted willful and wanton conduct. After reviewing the complaint, the court did not view the refusal to see the nurse as willful and wanton conduct. The court also held that the plaintiff failed to adequately plead how the use of untaped and overlapping wrestling mats for the dance activity constituted willful and wanton conduct.

NOTE: This case serves as a useful reminder to physical educators and coaches to give careful consideration to the playing surfaces on which they conduct their activities. More importantly, the need to not second-guess student complaints of injury or illness needs to be strongly emphasized. Physical educators and coaches are trained to provide first aid where appropriate, but *are not* in a position to diagnose injuries or illness. Without the protection of governmental immunity, the outcome of this case could have been different if the failure to seek medical attention had aggravated the initial injury. Even with governmental immunity, a better-worded complaint might have adequately presented a case for willful and wanton conduct in the securing of treatment for the injured student.

Grandalski v. Lyons Tp. High School District 204
711 N.E. 2d 372

Issue: Willful and wanton misconduct in failing to provide safety equipment and care and treatment of injured student

Level of Court: Court of Appeals
Date/State: 1999/Illinois
Decision: Defendant/Affirmed

The plaintiff, a 15-year-old student, was injured during her physical education class. The plaintiff was enrolled in a basic gymnastics class. Trial court evidence indicated that, even though this was a beginning gymnastics class, the plaintiff had begun gymnastics when she was three years old and began competing in park competitions by the time she was five or six. The plaintiff's injury occurred on the last day of the grading period.

The teacher was involved with a couple of other students towards the end of class. The plaintiff had already been tested and had completed the requirements for the class. She began doing some gymnastics maneuvers on her own on the other side of the gym. She executed a maneuver, known as a flip-flop, which she had learned to do without a spotter by the time she was seven years old. From her position on the other side of the gym, the teacher observed the plaintiff successfully complete a flip-flop. While attempting a second flip-flop, the plaintiff was unsuccessful and landed on her head. The teacher immediately went to the aid of the plaintiff while another student pushed the emergency button to summon the school nurse.

The plaintiff complained of neck pain. The teacher stayed with her until the nurse arrived. The plaintiff still complained of pain after the nurse arrived. The nurse completed a routine exam, observed the plaintiff's breathing, pulse, and pupils, which were found to be normal. The nurse determined that the plaintiff was able to move all of her extremities and displayed no tingling or numbness. She was taken to the office by wheelchair, and her mother was notified.

The plaintiff's mother took her to an emergency room, where it was determined that she had a cervical fracture. She was transported by ambulance to a hospital, where she underwent a cervical fusion.

Suit was filed, charging the district with negligent supervision, willful and wanton misconduct in failing to provide adequate safety equipment, and willful and wanton misconduct in the care and treatment given to the plaintiff after her injury.

The trial court granted the district's motion for summary judgment and dismissed the case on the basis of immunity. The plaintiff appealed while arguing that the district was not entitled to immunity under statute. Illinois statute provides immunity to school districts with exceptions to immunity being provided in cases of district failure to provide safe and adequate equipment and in cases of willful and wanton misconduct.

The court of appeals affirmed the lower court ruling. The court took note that the school provided hand belts for spotting purposes but that they were not used for the maneuvers being performed in this class. The court ruled that the decision to use the belts for particular maneuvers was a supervision issue and that issues of supervision were protected by immunity. The court held that the maneuver being performed by the plaintiff in this case was not a part of the curriculum but rather a spontaneous act on the part of the plaintiff.

The plaintiff charged that the teacher and nurse were both negligent and willful and wanton in their care for her after her injury. The plaintiff alleged that the teacher and nurse failed to immobilize her and allowed her to lie down, permitted her to leave school without her neck being immobilized, failed to properly assess her injury, and failed to request appropriate medical intervention and transportation by ambulance to the hospital. The court ruled that the actions of the teacher and nurse in caring for the plaintiff were protected by immunity. The court based its ruling on a section of the tort claims act that states that "no public entity nor public employee acting within the scope of his employment is liable for injury caused by failure to make a physical or mental examination, or to make an adequate physical or mental examination of any person for the purpose of determining whether such person has a disease or mental condition that would constitute a hazard to the health or safety of himself or others."

NOTE: This case points out, once again, the necessity of taking all head and neck injuries serious. Teachers and coaches would be prudent to err on the side of caution. The teacher and nurse in this case were granted immunity by statute. Nothing in the evidence suggested that the care, or alleged lack of care, provided by the teacher and nurse did anything to aggravate the plaintiff's injuries. However, it is easy to imagine any one of a number of potential events that could have occurred between the time the plaintiff left school and when she arrived at the hospital that could have invited much more disastrous consequences.

In Summary

The Reasonable Prudent Physical Educator or Coach:

1. Is familiar with injuries that are common to the activities being taught and is knowledgeable about the first aid required for these injuries.
2. Does not diagnose or treat injuries.
3. Considers all head injuries serious and follows established procedures for first aid, notification of parents, and the securing of medical attention.
4. Has an adequately equipped first aid kit available at all activity, practice, and game sessions.
5. Keeps an accurate record of all accidents and actions taken as well as a file of all medical information provided by parents or doctors.
6. Seeks immediate medical attention whenever the circumstances warrant it. Seeks an evaluation by athletic trainer or team physician before re-entering any significantly injured athlete back into competition or practice.
7. Does not delegate any first aid to students.
8. Together with the administration, develops a building plan for dealing with serious injuries. Does not move students or athletes where serious head or any spinal injury is suspected.
9. Requires a doctor's note giving permission to resume activity following any serious illness or injury for which a doctor has excused a student or athlete from activity.
10. Has an emergency contact and information card for each athlete in his or her possession at all practices and games.
11. Has a medical treatment authorization card in his or her possession whenever traveling out of town for games.
12. Develops policies for dealing with spilled blood and body fluids to protect against self-contamination and the potential spread of blood-borne pathogens.

Transportation

Physical educators, as well as coaches, voluntarily and sometimes are required to assume responsibility for transportation of students and athletes to and from special events and extracurricular activities. This practice raises a number of issues and concerns.

The transportation of students to and from special events and extracurricular activities can be accomplished in one of four ways. When transporting students, districts may employ an independent contractor, school vehicles driven by licensed district employees, employee vehicles, or private vehicles driven by volunteers. The potential for liability varies from situation to situation, with the least potential for liability existing where independent contractors are used and the greatest potential where private vehicles operated by volunteers are employed.

When an independent contractor is employed by a district to transport students, the district, for the most part, transfers its liability to the independent contractor. A duty of care still exists, however, relative to the selection and retention of the contractor. Issues such as the licensing and certification of drivers, liability insurance, and the past record of the selected company need to be considered.

Transportation of students by district vehicle is usually accomplished by either school bus or passenger vans. Buses are the best-maintained vehicles in the district fleet. They make daily trips in and out of the bus garage and have the daily availability of servicing staff to attend to maintenance needs. They are also operated by trained, licensed personnel.

Vans, on the other hand, are the least maintained vehicles in the fleet. Because they are typically housed at school sites and are driven by teachers and coaches, district motor pool staff must often rely on the teacher or coach to alert them to servicing and repair needs. The driver of any district vehicle has the duty to promptly report any necessary maintenance or repair needs.

Any vehicle with a potentially hazardous condition such as broken mirrors, burnt-out lights/flasher bulbs, doors that do not open properly, tires low on tread, or broken seat belts, should not be used until the hazardous condition has been corrected. It is not enough to simply report the condition. Report and then do not use the vehicle until it is attended to. Each vehicle should be supplied with all necessary emergency equipment such as flares, markers, first aid kit, and traction devices during inclement weather. Care also needs to be taken to not overload vehicles with either passengers or equipment.

The Eugene School District in Eugene, Oregon, has taken strong measures to promote safety in the transportation of students by district vehicles (12- and 20-passenger vans) that are operated by teachers and coaches. Anyone transporting students with district vehicles must be certified. The certification process includes obtaining current first aid

and CPR certification as well as attending a two-hour class at the transportation department. The class covers characteristics of the vehicle, operation of the vehicle, emergency procedures, and driver expectations relative to reporting and obtaining necessary servicing and repair. The class also details requirements of drivers relative to the use of alcohol and the allowed maximum amount of daily on-duty time, including driving. Driving records are checked with the Oregon Department of Motor Vehicles, and the district has a network that allows it to be notified of changes in that record due to either moving citations or accidents. A point deduction system has been developed for citations and accidents, allowing for objective decisions relative to certification and the maintenance of certification for drivers. The Eugene model is an excellent one for those districts choosing to allow teaching and coaching staff to transport students with district vehicles.

The use of employee cars significantly increases the potential for driver and school district liability. The owner of the car has responsibility for the maintenance of the vehicle, and any lack of maintenance that is connected to an injury accident could leave the employee liable. Employees who drive students or athletes should have adequate insurance coverage, especially in the area of PIP (personal injury protection). The owner/driver also needs to be aware of any limitations on his or her coverage. A number of PIP policies become void if the driver accepts any compensation for the use of his/her vehicle.

Compensation can also affect liability in those jurisdictions having guest statutes on the books. Guest statutes provide liability only for willful and wanton misconduct when the injured party rode as a guest of the driver. If the purpose of a trip is primarily for business, rather than pleasure, and if there is any direct or indirect compensation of the owner or operator of the vehicle, the guest relationship does not exist. Where the guest relationship does not exist, the driver is liable for ordinary negligence. Where transportation is being provided for team members to games, they generally fall outside of the guest relationship.

The casual use of private vehicles operated by volunteers is a risky practice for schools, teachers, or coaches to employ when transporting students or athletes. There is generally no knowledge of the driving record of these volunteers or knowledge of the maintenance history of the vehicles being used. The teacher or coach in these cases is usually "contracting blind" with a parent or volunteer for the transportation, and the volunteer becomes an agent of the school district. The same issues relative to PIP coverage, guest statutes, and reimbursement previously discussed apply here as well. If the decision is made to use private vehicles operated by parents or volunteers, the employee in charge of the activity needs to be aware of the insurance coverage of the driver, the condition of the vehicle, and the reliability of the driver as well as his/her driving record. The employee should ensure that no vehicle is overloaded

and that each student or athlete has both a seat and seat belt. As with all vehicles, the car of the parent or volunteer should be provided with emergency equipment such as flares, markers, and first aid supplies.

The amount of case law relevant to the transportation of students and athletes by teachers and coaches in the K-12 school setting is limited. This is due in large part to the statutory requirements of insurance coverage, which usually allow claims to be settled outside of litigation. The following cases offer some illustration of the points discussed.

Clement v. Griffin
634 So. 2d 412

Issue: Negligent maintenance and operation of van used by baseball team

Level of Court:	Court of Appeals
Date/State:	1994/Louisiana
Decision:	Plaintiffs/Affirmed in part, reversed in part, and amended

Ten members of a college baseball team suffered serious injury caused by a serious, single-car accident following a blowout of a rear tire. Suit was brought against the college, the driver of the van, Ford Motor Company, and Goodyear Tire Company. The plaintiff alleged that Goodyear was strictly liable for the manufacturing of the tire and Ford for the use of the tire on its vans. It was alleged that the college was negligent in the maintenance of the vehicle and in the selection and training of the driver. The plaintiffs charged the driver with negligence in the operation of the van.

Trial court evidence established that the van was owned and maintained by the college and was routinely used by the athletic department for the transportation of the baseball team. On the day of the accident, a student coach was driving the van. The vehicle was loaded with 13 passengers and was en route to a game when a blowout occurred. The driver was unable to retain control of the vehicle. The van entered the median and rolled several times. Several of the team members were ejected from the vehicle during the accident.

Evidence presented at trial indicated that the student driver of the van possessed a regular driver's license but did not possess a chauffeur's license as required by both Louisiana law and the rules and regulations of the college for drivers of vans. The driver had received no training in the operation of the van, and evidence was introduced suggesting he was exceeding the posted speed limit. He allegedly was an inexperienced driver who did not know how to react properly in the event of a blowout. Evidence and testimony alleged the tires had 24,000 miles on them and had never been rotated. Although contradictory evidence existed, substantial evidence was presented that indicated that the tires were

substantially underinflated, as per the manufacturer's recommendations, and that the driver of the van knew they were underinflated.

The trial court found for the plaintiffs while holding Goodyear to be 60% at fault and the college 40% at fault. The action against the driver was dismissed as per agreement with the plaintiffs. Ford Motor Company was exonerated of any wrongdoing. The trial court returned a verdict for the 10 plaintiffs totaling over 3.7 million dollars, and the defendants appealed.

The court of appeals ruled that the trial court erred in admitting some scientific evidence concerning manufacturing defect in the tire and that the evidence did not support a finding of a defect in the tire. The trial court finding against Goodyear was reversed.

The court of appeals held that the college had a duty to properly maintain the vehicle, select a qualified driver for the vehicle, properly train the driver, and, vicariously through the driver, to properly operate the vehicle. The court of appeals upheld the lower court finding against the college. The court noted the existence of ample evidence that suggested that the tires were significantly underinflated. Expert testimony stated that the underinflation of the tires was a significant factor in the tire failure and ultimate accident. The court ruled that the college had in fact breached its duty to maintain the van in a safe operating condition.

The court recognized that the mechanics of driving large vans are different from the mechanics of driving passenger cars and that this was the reason behind the law, and the college rules and regulations, requiring a chauffeur's license for all drivers of vans. The court ruled that the college breached its duty to the public, including the plaintiffs, by failing to require that the driver of the van possess the proper licensing.

The court ruled that the college was negligent in its training of the driver, especially in light of evidence that showed another van suffered a blowout on a freeway the previous year, resulting in a very close call for the baseball team. The court held that the college did not give the driver any training and that he was ill-prepared to respond to the blowout. The court took note of evidence indicating that the driver reacted improperly by applying the brakes quickly and by pulling the steering wheel in the opposite direction than that which the van was skidding, which resulted in the van going totally out of control.

The court went on to rule that the college was vicariously liable for the actions of the driver. The court acknowledged evidence suggesting that the driver was exceeding the speed limit, that he was driving recklessly, and that he ignored the underinflated tires even after having them brought to his attention.

The court found that some of the damages assessed were excessive. The court amended the total damages to 3.3 million dollars.

McKee v. Southeast Delco School District
512 A. 2d 28

Issue: Use of seat belts in school vans

Level of Court:	Superior Court
Date/State:	1986/Pennsylvania
Decision:	Defendant/Set aside for new trial/Affirmed

The plaintiff, a six-year-old elementary school student, received mouth and jaw injuries as a result of being thrown forward from her seat into the console of the van in which she was riding as it braked to avoid colliding with another car. The van was owned and operated by a private company. The jury returned a verdict in favor of the defendants. The trial court set aside the jury verdict and ordered a new trial because it determined it had improperly excluded evidence regarding the failure of the driver to use available seat belts to restrain the plaintiff. The defendants appealed the order for a new trial.

On appeal, the Superior Court noted that the admissibility of evidence regarding the nonuse of seat belts has usually been dealt with in cases where their nonuse has been used in an attempt to show contributory negligence on the part of plaintiffs. Some courts have held that, absent a statutory mandate, a person has no duty to wear a seat belt and that the admissibility of evidence regarding their use was not allowed in attempting to establish contributory negligence. Other courts have held that, depending on the circumstances, failure to wear a seat belt could constitute contributory negligence. The Superior Court stated that these courts have at least implicitly held that there is a duty to use seat belts even in the absence of a statutory mandate.

The Superior Court held that the facts in this case could lead a jury to find that the driver of the van had a duty to restrain the children in the van by using the seat belts. It took note that the plaintiffs were prepared to show that the district had instructed the owner of the van to restrain the children with seat belts and that the owner of the van had given its drivers instructions that seat belts were to be worn. The Superior Court affirmed the lower court order for a new trial.

McCurry v. School District of Valley
496 N.W. 2d 433

Issue: Overloaded van, lack of seat belts, lack of driver sleep

Level of Court:	State Supreme Court
Date/State:	1993/Nebraska
Decision:	Defendant/Affirmed

Parents brought a wrongful death action against the school district and the van driver for the death of their daughter on a school-sponsored ski trip. Evidence presented at trial indicated that the school district arranged for a chartered bus for the trip and, due to large interest on the part of students, also had to arrange for some additional transportation. Arrangements were made for a community member to use his van to help transport students. The trip to the ski area was 600 miles. The students were scheduled to leave at 7 p.m. and arrive at the slopes at 8:30 a.m. the next morning.

The driver of the van, a nonschool employee, left work a little after 4 p.m. on the day of departure. After a couple of hours of sleep, he picked up his load of students and chaperones at the high school and departed for the ski area. Only one driver was assigned to the van. Trial evidence alleged the van was designed for eight passengers but was assigned nine. There were not enough seat belts for each of the passengers.

The driver of the van stated that it was quite windy and that he had observed slick spots on the road. He claimed he slowed the van to 50 miles per hour and applied the cruise control. Another adult stated she saw the driver sitting on one of his legs while driving, relying on the cruise control for acceleration.

The vehicle was involved in a single-car accident just after passing under an overpass. Testimony indicated that there was a curve in the road just after the overpass. The driver alleged that, at the end of the curve, "it was like somebody just took their hand and pushed the whole van to the side." The driver testified he tapped the brakes to disengage the cruise control as he traveled through the median strip. He alleged he steered to the left to miss a turnaround and then steered the van up onto the eastbound lanes of the freeway to avoid a culvert. The van rolled onto its side. After evacuating all of the occupants out of the van, through a kicked-out front windshield, the deceased student was found pinned underneath the van.

The driver stated he did not know why the van left the road but told the investigating state trooper "it must have been ice or could have been ice." A student told another teacher that she heard the driver and the other adult passenger conversing when the van began to swerve. The other adult, however, claimed that she was asleep until she was awakened by the screech and lurching of the van. The investigating state trooper testified

that it was not icy and that there was no wind to speak of. The trooper noted that there were no skid marks on the road or in the median strip. The police concluded that the driver of the van fell asleep.

The plaintiffs alleged that the school district negligently entrusted transportation to the driver of the van and that, through its agent, the driver, the district was negligent in the operation of the van. The driver of the van and the plaintiffs entered into a covenant not to sue after agreeing to pay the plaintiffs $95,000. The agreement acknowledged that the driver was not paying the full amount of damages as would be paid by all persons, including the school district, and that the agreement represented a covenant not to sue the driver and not a release of liability.

The district filed for and was granted a summary judgment to dismiss by the trial court. The plaintiffs appealed. The supreme court ruled that the trial court was correct in ruling that the plaintiff failed to adequately plead that the district negligently entrusted the transportation of students to the van driver. The court held, therefore, that the success of an appeal would hinge on the issue of negligent operation of the van. The court concluded that the driver was fulfilling the interests of the school district and that, except for the presence of his daughter, he had no control over who was riding in his van. The court noted that, although part of his expenses, gas, and lodging were being paid by the school district, the driver was not paid a salary or fee. The court concluded that the question of whether or not the driver acted as an agent of the school district could be argued between reasonable minds and therefore was not an appropriate issue for summary judgment. The court then turned its attention to the covenant not to sue entered into by the driver and the plaintiffs. The court held that Nebraska has traditionally viewed covenants not to sue and releases as the same. In this case, the court ruled it did not matter how an agreement was arrived at, by covenant not to sue or by release. The court held that an agreement with the agent driver constituted an agreement with the school district. The supreme court, with dissent, affirmed the lower court summary judgment on behalf of the school district.

NOTE: Despite the ultimate favorable ruling for the school district by the court, a number of important considerations were brought forth by the circumstances surrounding this case. First, the record indicated that there was no investigation of the driving record of the van driver, or inspection of his van, before assigning him the responsibility of transporting students on a five-day, 1,200-mile round-trip school excursion. The failure to do so, on a trip of this magnitude, certainly served to put the district at risk.

Vans or other vehicles used to transport students should never be overloaded, as was done in this case. When using either district vans or private vehicles to transport students, each occupant of the vehicle should be provided with and required to wear a functioning seat belt. The driver in this case embarked on a 600-mile drive at night after spending all day on the job.

Districts should develop policies that address not only the maximum driving time allotted per driver in a 24-hour period but also the maximum amount of on-duty or work time allotted within a 24-hour period.

Brown v. Egan Consolidated School District 50-2
449 N.W. 2d 259

Issue: Lack of emergency lights or warning devices

Level of court:	State Supreme Court
Date/State:	1989/South Dakota
Decision:	Plaintiff/Affirmed

The plaintiff collided with a school bus while driving to work. Evidence at the trial court indicated the weather on the date of the accident was blizzardlike, with blowing snow, poor visibility, and icy roads. The plaintiff came across the bus, which was stopped in the middle of the road without any emergency lights, brake lights, taillights, or any other warning devices. The plaintiff was unable to stop her car and rear-ended the bus. She suffered a severed aorta, broken leg, broken hip, and other serious injuries.

The school district filed for summary judgment based on its claim of governmental immunity. The trial court denied the district's motion, and the district appealed. On appeal, the supreme court upheld the lower court decision. The court ruled that a South Dakota statute excluding liability for use of a school bus by outside nonprofit organizations did not apply to school districts transporting their own students to and from school or for interscholastic activities. The court held that the district had waived its immunity up to the limits of its insurance coverage, which, in this case, was $400,000.

Adams v. Kline
239 A. 2d 230

Issue: Overloading vehicle

Level of Court:	Superior Court
Date/State:	1968/Delaware
Decision:	Plaintiff/Affirmed in part, reversed in part

The plaintiff was injured in an automobile accident while transporting other team members and equipment to an away game. Evidence indicated that two vehicles were used to transport the university soccer team to its game. The lead vehicle was driven by the coach, and the other vehicle, a university-owned van, was driven by the plaintiff. The van the plaintiff was driving carried six other players as well as all the team

gear. The lead vehicle braked suddenly for a yellow light, and the van driven by the plaintiff was unable to stop and struck the lead vehicle in the rear.

The plaintiff filed suit, claiming negligence on a number of grounds. He alleged that the coach did the following:

1. Failed to inspect and, therefore, discover the allegedly defective brakes;
2. Allowed the van to be overloaded;
3. Failed to determine whether he was a competent driver;
4. Failed to instruct the plaintiff in the correct operation of the van;
5. Failed to determine if the plaintiff had a valid driver's and chauffeur's license;
6. Failed to determine whether he met the 21-year age requirement for driving a school bus.

The defendant claimed the plaintiff was contributorily negligent and moved for a summary judgment on all allegations. The motion was denied, and the defendant appealed.

Evidence indicated that the plaintiff was a competent driver who had experience driving heavy-duty equipment of all types. It further indicated that, when traveling to away games, the drivers of the vehicles were simply determined by who got behind the wheel. The van had a carrying capacity of 900 pounds and was alleged to be carrying 1,300 to 1,400 pounds on the day of the accident.

The appellate court ruled that the evidence failed to support any allegation of defective brakes and held that the coach did not have any duty to personally inspect the brakes. The court also ruled that the evidence failed to sufficiently support allegations that the coach and university failed to determine the competence of the driver and the licenses he possessed or that they failed to instruct him in the operation of the van. The court held that none of the above allegations could be found to be the proximate cause of the injury, and summary judgment was granted to the defendants on these allegations. However, the court ruled against the defendants as to their motion for summary judgment related to the allegation of overloading the vehicle. The court held that if it could be shown that the coach allowed the vehicle to be overloaded and that the overloading of the vehicle could be foreseen to affect the ability of the van to stop in a safe distance, a jury might find negligence. Summary judgment on this allegation was denied.

Blair v. Board of Education of Sherburne – Earlville Central School
448 N.Y.S. 2d 566

Issue: Supervision on bus

Level of Court: Supreme Court, Appellate Division
Date/State: 1982/New York
Decision: Plaintiff/Affirmed

The plaintiff suffered a serious, permanent eye injury when struck by an object thrown by another student while riding the school bus. The plaintiff alleged negligence in supervision. Evidence indicated that horseplay and the throwing of objects had gone on for 15 minutes prior to the accident and that the driver took no action to stop it. Testimony indicated that the driver was even alerted to the dangerous situation by one of the student passengers. The trial court found for the plaintiff and awarded $102,600 in damages. The supreme court upheld the lower court decision while holding the driver responsible for controlling student behavior.

NOTE: This accident occurred while students were being transported home from school. The bus driver, being the only adult aboard the bus, had the dual responsibility of driving and supervising students. This is a standard practice in the transportation of students to and from school.

Transportation of athletes to another school for competition presents a different situation. In this situation, the bus driver is joined by one or more coaches. It would be unwise for coaches to assume that the bus driver has the sole responsibility of supervising students. The supervisory duty of bus drivers in this situation clearly becomes secondary to the duty owed by the coach. Clear expectations for the bus driver and the coach should be developed and clearly communicated to all members of the transportation and athletic departments.

Lofy v. Joint School District #2, City of Cumberland
166 N.W. 2d 809

Issue: Transfer of liability to independent contractor

Level of Court: Supreme Court
Date/State: 1969/Wisconsin
Decision: Defendant/Affirmed

The plaintiff was injured, and her husband killed, as a result of a multi-vehicle accident in which a bus, chartered by the school district to transport students to a basketball tournament, rear-ended their car. The school district moved for summary judgment, claiming it was not liable for any negligence on the part of the transportation company with which it contracted. The trial

court granted the district's motion, and the plaintiff appealed.

On appeal, the supreme court upheld the lower court decision. The court ruled that one who contracts with an independent contractor is generally not liable for the acts of the independent contractor. Although noting that a district may not delegate its liability where the services contracted for involve inherent danger, the court held that the transportation of students by bus between two cities could not be held to be inherently dangerous.

In Summary

The Reasonably Prudent Physical Educator or Coach:

1. Refrains from using anything other than chartered or district vehicles to transport students and athletes.
2. Never overloads a vehicle.
3. Makes sure each rider has a designated seat and uses a seat belt if one is provided.
4. Completes a visual check of a vehicle as well as a check of all lights, blinkers, tires, and wipers whenever a vehicle other than a school bus is used. Does not use any vehicle that is not well maintained.
5. Immediately reports any maintenance or safety needs of any district vehicle that he/she uses to transport students.
6. Makes sure any vehicle used is equipped and supplied with adequate warning devices such as markers and flares.
7. Equips any vehicle used to transport students or athletes with a first aid kit.
8. Never arranges for students or athletes to drive.
9. Provides adequate supervision within the vehicle.
10. Makes sure that any vehicle used is properly insured and that all drivers are properly licensed. In a number of states, a large passenger van full of riders requires the driver to have a chauffeur's license.
11. Follows district guidelines and all reasonable standards for total driving time as well as total on-duty time within any given work day. Does not attempt to transport students when overly tired.

Agreements To Limit Liability

Permission Slips, Agreement To Participate, Waivers, Releases, and Indemnity Agreements

In an attempt to manage risk and limit liability, school districts often require students and parents to sign permission slips, agreement to participate forms, waivers, releases, and indemnity agreements in conjunction with the many school programs, activities, special events, and outings in which students participate. Commonly used with special extracurricular events and activities, they are also used, in some cases, as prerequisites for participation by students in both interscholastic athletic programs and certain activities within the physical education curriculum as well. Although each of these forms can serve a sound administrative function, it is important for physical educators, coaches, and program administrators to understand the difference between them and to understand that they do little and, in most cases, nothing, to relieve them of liability for their negligent acts.

Permission slips are exactly that, permission slips. They alert or give notice to the parent of the basic procedural particulars—the what, where, when, and with whom of a given activity—and solicit permission for their child's participation. Permission slips are generally reserved for special events and off-campus activities. The mere granting of permission to participate is not a waiver or a release. Although they serve the useful function of providing information and good public relations, permission slips do nothing to relieve or diminish liability for negligent acts.

Agreement to participate forms differ significantly from permission slips. They inform the participant of the specific nature of the activity, inform the participant of expectations for behavior, and request acknowledgement of participant fitness and readiness to participate in the activity. An absolute necessity in acknowledged risk activities such as swimming, gymnastics, rock climbing, adventure activities, and interscholastic athletics, agreement to participate forms can also prove very useful throughout the curriculum. They can be easily built into planned course statements and class syllabus or expectation sheets at the middle and high school levels. In the school setting, the intent of a well-written agreement to participate form is to inform and to limit liability, not waive it. In the event of a lawsuit, these forms can prove to be very useful in a courtroom of any jurisdiction employing assumption of risk, contributory negligence, or comparative negligence defenses.

In describing the nature of the activity, agreement to participate forms should explicitly describe the activity and the conditions under

which it is to be conducted. This includes clearly stating the risks of injury inherent to the activity itself. It is imperative that the language be clear and unambiguous to the participant. The legal rationale behind the nature of activity element of the agreement form is the assumption of risk doctrine. Under the assumption of risk doctrine, a plaintiff is said to have assumed the risk of injuries inherent to an activity, provided that the plaintiff had knowledge, understanding, and appreciation of those risks. The signed agreement to participate form can be a strong piece of evidence in court used to establish that a plaintiff fully understood and appreciated the risks of a given activity and voluntarily assumed them.

A well-written agreement to participate form should also clearly inform the participant of behavior expectations on his or her part. The responsibility of the participant to follow all directions of the instructor/supervisor and to adhere to all established rules and procedures should be clearly stated. Special safety rules, regulations, and procedures for a given activity should be printed on the reverse side of the form. In addition to stating behavior expectations, the form should also clearly outline participant responsibilities such as alerting the instructor/supervisor to all discovered hazards, reporting of all injuries, and informing the instructor of undue participant fatigue or difficulty in performance. The language of this section of the form should clearly communicate not only the expectations and responsibilities of the participant but also the importance of strictly adhering to these expectations and responsibilities in order to facilitate the safety of the participant as well as all other participants. The legal rationale for this element of the agreement to participate form is the doctrine of contributory negligence. Whether in a jurisdiction employing contributory negligence or comparative fault, a well-written agreement to participate form can provide strong evidence to support district claims of fault on the part of an injured plaintiff in causing his/her own injuries or contributing to the injury of others.

The last part of the agreement to participate form should provide the participant the opportunity to acknowledge his or her fitness and readiness to safely participate and meet the demands of the activity. As previously discussed, the duty of supervision requires that teachers/coaches be aware of the health status of all participants in their class or on their team. Provisions should be made for the participant to inform the instructor/coach of any physical condition that might have bearing on the participant's safe participation. Failure of a participant to acknowledge such conditions lessens the ability of the instructor/coach to foresee potential risks and to take reasonable precautions for the individual participant's safety.

Different from agreement to participate forms, waivers attempt to waive the rights of parents and students to sue school districts and their employees for their negligent acts. They amount to a contract to not hold

a party liable for their future negligent acts. As such, they represent an expressed assumption of risk. As was discussed in the section on the assumption of risk doctrine, the concept, when used as a defense against a negligence claim, requires the actual knowledge and understanding of the risks assumed and the voluntary assumption of those risks. If either of these factors is missing, the assumption of risk defense fails. Waivers and releases should provide clear warnings relative to the hazards and risks associated with participation in the particular activity being entered into. They should specifically detail the risks to be assumed and should also include the responsibilities of the individual engaging in the activity covered by the agreement.

Although the law has long recognized the right of individuals to contract with others to limit liability, it has been equally strong in holding such agreements invalid where they are contrary to public policy. It has also recognized that minors may not legally enter into contracts or have their rights waived by their parents. As a result, parents may sign away their own right to sue through a waiver, provided the agreement is both clear as to what is being waived and is not contrary to public policy. They may not, however, sign away the rights of their injured child to sue after reaching the age of majority.

Waivers attempting to waive the liability of schools and their employees for school activities have usually been held to be contrary to public policy and, therefore, invalid. They do serve as a deterrent to sue in many cases, however, where the injured party is not aware of his or her rights under the law. Although generally invalid as a complete waiver of the right to sue, a well-written waiver can be very useful in defending a teacher, coach, or school district against a negligence claim. The information contained within these documents can often be used to help substantiate defense claims of contributory negligence, implied assumption of risk, or comparative negligence on the part of an injured plaintiff and thereby limit liability. They can be effectively used to demonstrate plaintiff knowledge of both the risks involved in and the responsibilities required for participation in a given activity. Waivers are void in cases of gross negligence or willful and wanton misconduct.

Like waivers, release agreements represent a contract and may be entered into by adults only. They are very similar to waivers, with one technical distinction. Whereas waivers speak to future negligent acts, releases speak to present or past liabilities. Execution of a release agreement is a contract to release a party from responsibility for a cause of action that has arisen. As with waivers, parents cannot execute a binding release on behalf of their minor children.

Indemnity or hold-harmless agreements differ slightly from waivers and releases. Where waivers and releases attempt to waive liability for negligent acts, indemnity agreements attempt to shift the financial burden for injuries arising out of negligent acts from one party to another. The

right to sue is maintained but the parent, in this case, would be relieving the school or employee of the burden of paying financial damages. As with waivers and releases, indemnity agreements can be entered into by adults only and parents may not waive the right of their children to recover damages in their own right after reaching the age of majority. Indemnity agreements attempting to hold school districts and their employees harmless for their negligent acts have generally been held to be contrary to public policy.

The following cases illustrate the concepts discussed above. The Wagenblast case from Washington outlines a six-part test employed by courts when determining whether waivers, releases, and indemnity agreements are contrary to public policy and, thereby, invalid.

Wagenblast v. Odessa School District
758 P. 2d 968

Issue: Waivers and releases

Level of Court:	State Supreme Court
Date/State:	1988/Washington
Decision:	Plaintiff/Affirmed

Suit was filed on behalf of four Odessa School District students who, along with their parents, were required to sign liability releases (exculpatory agreements) as a condition to their participation in interscholastic athletics. The releases attempted to waive district liability for any ordinary negligence arising in connection with the district's interscholastic athletic program. The trial court granted summary judgment for the plaintiff and permanently restrained the Odessa School District from requiring the students and their parents to sign the releases. The school district appealed the decision directly to the state supreme court. The state supreme court consolidated this appeal with an appeal of a Seattle case that had been filed with the state court of appeals. In the Seattle case, the Superior Court of King County denied the request for injunctive and declaratory relief against the use of waivers and releases as a condition for participation in an athletic program.

The supreme court upheld the decision against the Odessa School District and reversed the Seattle decision. The court held that the releases that public school students were required to sign as a condition of engaging in school-related activities and that released school districts from consequences of all future school district negligence were invalid in that they were a violation of public policy. The court noted that, although parties may contract with one another to not hold each other liable, there are instances where public policy reasons for preserving the duty of care owed by one to another outweighs the freedom to contract. Relying on a

decision of the California Supreme Court in Tunkl v. Regents of University of California, 383 P. 2d 441 (1963), the court applied the test used in Tunkl to the cases at hand. The Tunkl decision outlined six characteristics of exculpatory agreements that need to be considered when determining the validity of any agreement. The Washington Supreme Court noted that, the more of the six characteristics that appear in an agreement, the more likely it would be declared invalid on public policy grounds. It held that all six characteristics were present in the current cases. The six characteristics examined in deciding this case were as follows:

1. "The agreement concerns an endeavor of a type generally thought suitable for public regulation." Interscholastic sports are clearly regulated to an extensive degree by both local school boards as well as the state activities association.
2. "The party seeking exculpation is engaged in performing a service of great importance to the public, which is often a matter of practical necessity for some members of the public." Although students have no fundamental right to participate in interscholastic sports, it is nonetheless considered an integral and important part of the total educational program by both students and the general public.
3. "Such party holds itself out as willing to perform this service for any member of the public who seeks it, or at least for any member coming within certain established standards." Interscholastic sports are clearly open to all students who meet certain skill and eligibility requirements.
4. "Because of the essential nature of the service, in the economic setting of the transaction, the party invoking the exculpation possesses a decisive advantage of bargaining strength against any member of the public who seeks the services." In most instances, alternative programs of organized competition do not exist. Where outside alternatives exist for some activities, they lack the attraction of interscholastic competition and often have a high cost associated with them. Because of the high importance of interscholastic sports and the limited alternatives to its activities, schools are viewed to have a near monopoly and, therefore, clearly enjoy disparate bargaining strength when they require the signing of releases.
5. "In exercising a superior bargaining power the party confronts the public with a standardized adhesion contract of exculpation, and makes no provision whereby a purchaser may pay additional reasonable fees and obtain protection against negligence." In both cases before this court, the policies regarding releases are unwavering. Students and parents have no alternative but to sign or be barred from participation.

6. "The person or property of members of the public seeking such services must be placed under the control of the furnisher of services, subject to the risk of carelessness on the part of the furnisher, its employees or agents." The court noted that school districts owe a duty to students to use ordinary care, to anticipate reasonably foreseeable dangers, and to take reasonable precautions to protect students from those dangers. Due to the coach-athlete relationship, the student athlete is placed under the control of the coach. By signing the release, the student athlete becomes subject to the risk that the district will breach their required duty of care.

Alexander v. Kendall Central School District
634 N.Y.S. 2d 318

Issue: Wrestler is not bound by release executed by his parent

Level of Court:	Supreme Court, Appellate Division
Date/State:	1995 New York
Decision:	Plaintiff/Affirmed

A youth wrestler was injured when he was driven from the wrestling mat and struck a scoring table during a wrestling tournament. Suit was brought against the president and head coach of the youth wrestling club as well as against the school district. The defendants filed for a summary judgment to dismiss the case. They argued that the plaintiff had assumed the risk of injury by way of his participation and that the parent of the plaintiff had signed a release agreement relieving the defendant for any and all injuries suffered by the plaintiff during the wrestling tournament.

The trial court denied the motion for summary judgment, and the defendants appealed. The appellate court affirmed the lower court ruling. The court found that the plaintiff's action was not barred by the primary assumption of risk doctrine. The court agreed that the expert witness for the plaintiff had raised questions of fact relative to whether the placement of the scoring table at the tournament and the organization and operation of the tournament created risks beyond those inherent in the sport of wrestling.

The court also held that the exculpatory clause of the release agreement did not "plainly and precisely limit the liability" of the defendant (president and head coach) for his own liability. The court ruled that the broad and sweeping language of the exculpatory clause was ineffective in barring liability. The court went on to rule that a minor is not bound by a release signed by his or her parent(s).

NOTE: Release agreements, waivers, or indemnity agreements can go a long way in helping to establish some degree of assumption of risk or comparative fault on the part of plaintiffs. However, teachers and coaches must keep in mind that, although a parent may sign away their rights, they may not sign away the rights of their minor children to bring suit on their own behalf. As legal contracts, these binding agreements may not be entered into by minor children as a matter of law. Again, although not serving as a legal bar on the part of minor children to seek recovery for damages, these agreements do help establish knowledge and appreciation of risks being assumed through participation in the activity.

In Summary

The Reasonably Prudent Physical Educator or Coach:

1. Makes use of permission forms, where appropriate, to properly notify parents of the particulars of an activity and to seek their permission.
2. Requires student and parent signature of "agreement to participate" documents prior to participation that fully describe the activity to be engaged in and give clear and appropriate warnings of specific injuries and all known risks associated with participation in the given activity. These documents should also include behavior and procedural expectations for participants and solicit acknowledgement of their fitness and readiness for participation.
3. Does not rely on waivers, releases, or indemnity agreements for absolute protection from liability.

Miscellaneous Issues

Hazing

Hazing is any act of intimidation, harassment, or physical abuse intended to either initiate an individual into team membership or to communicate and establish dominance over another on the basis of another's perceived superiority or higher status within the team or the social environment. Hazing is not a new phenomenon. It has a long tradition in organizations such as college fraternities and the military as well as in athletics. It has, however, become a particularly serious issue relative to supervision in interscholastic athletics and has gathered national headlines over the last 10 years.

Hazing, in many cases, becomes much more than annoying harassment, teasing, and practical jokes. Reflective of our society, hazing has become increasingly violent and often carries sexual overtones. Cases making headlines in Washington, Connecticut, Utah, and Massachusetts have included sexual harassment and assault, including brutal rapes.

Injuries resulting from hazing are not only physical but mental and emotional as well. The emotional harm inflicted on victims of hazing can leave scars that can last a lifetime. Hazing can have ramifications for a program that extend well beyond the immediate incident as individual hurt and anguish is passed on to others. Hazing is a serious outcome of poor supervision and should not be tolerated in any form.

Hazing does nothing to establish long-term team unity and success. A history of incidents can serve to discourage some individuals from ever trying out for a team. Although hazing occurs most frequently in team sports, individual sports are by no means immune. The vast majority of cases occur at the varsity level of competition and usually, but not always, involve males on male teams. Hazing incidents almost always occur when the coach is not present and occur most frequently in the locker room. The following summary information is from a 1993 study conducted by James H. Conn, Robert N. Tomkins, and Terri Hunter.[43]

Rank Order of Hazing Incidents by Location

Locker room	41%
Gym	18%
Athletic field	15%
Off Campus	15%
School Bus	3.5%
School Grounds	3.5%
Pool	2%
Wrestling room	2%

Rank Order of Hazing by Sport

Football	31%
Basketball	16%
Wrestling	12%
Soccer	8%
Swimming	8%
Baseball	6%
Track	6%
Cross Country	3.5%
Tennis	3.5%
Volleyball	3.5%
Golf	1%
Cheerleading	1%

Rank Order of Hazing Incidents by Level of Competition

Varsity	80%
Junior varsity	9%
Freshman	8%
Junior High	3%

Rank Order of Hazing Incidents by Gender

Male	85%
Female	10%
Both	5%

Responses to Hazing Conditions

Coach Present	20% Yes
Injuries	16% Yes
Tradition	72% Yes
Parents Aware	28% Yes
Administration Aware	27% Yes

Hazing can lead to not only state civil suits for negligence but also to federal suits alleging deprivation of rights and criminal charges. Pretending hazing is not going on, when it is, is negligent, and not knowing that it is going on is no excuse. Although many hazing incidents have resulted in criminal trials and civil suits that have been either decided at the trial court level or settled out of court, few have been appealed and reported in the national reporter system. The following cases address some of the issues related to hazing.

Reeves ex rel. Jones v. Besonen

754 F.Supp. 1135

Issue: Hazing on football bus

Level of Court: U.S. District Court
Date/State: 1991/Michigan
Decision: Defendant

As a result of a hazing incident on a bus transporting a high school football team home after an away game, the plaintiff suffered a broken nose and bruised ribs. The plaintiff was a freshman member of his football team. While on the way home after the game, he was called to the back of the bus to go through the "hit line." The hit line ritual consisted of other team members roughing up a younger player as he moved from the back of the bus to the front. Players walking the hit line were routinely pushed and punched with fists. It was not unusual for their shirts or pants to be torn off or for underwear to be pulled up, giving them a "wedgy." As the plaintiff walked the line, he was hit in the face with a forearm, knocking him to the ground. As a result of the incident and his injuries, the plaintiff incurred medical costs as well as alleged emotional distress.

Evidence was presented that indicated the coach, and at least one member of the school board, knew the hit line hazing ritual had gone on for more than 10 years. It was shown that at least one member of the coaching staff participated in the ritual himself by walking the line.

The plaintiff filed a civil rights suit against the school district and the coach. In count I of his suit, the plaintiff alleged that the defendants violated his constitutional rights under the 4th and 14th amendments. Specifically, he alleged that they violated his right to be secure in his person against unreasonable seizure; his right to be secure in his person against unreasonable and excessive force; his right to not be deprived of life, liberty, or property without due process of law; and the right to equal protection of the law. The additional two counts of the plaintiff's complaint outlined state law claims.

The Federal District Court held that the hazing ritual and the resultant injuries inflicted on the plaintiff failed to present a cause for action under the U.S. Constitution. The defendant's motion for summary judgment was granted, thereby dismissing count I of the complaint. Having dismissed the constitutional claim under count I of the complaint, the court dismissed counts II and III without prejudice for lack of jurisdiction. The court held that the remaining claims could be brought in the appropriate state court.

Caldwell v. Griffin Spalding County Board of Education
503 S.E. 2d 43

Issue: Hazing at football camp

Level of Court: Court of Appeals
Date/State: 1998/Georgia
Decision: Defendant/Affirmed

The plaintiff, a freshman member of his school football team, was attacked and beaten by other members of his team during an initiation ritual that took place during the team's summer football camp. The plaintiff and his father filed suit against the school district and coaches, alleging that they were negligent in their supervision. The plaintiff contended that the district and coaches knew or should have known that the initiations were an annual event at the camp yet did nothing to prevent the attack on the plaintiff.

Players were housed in a dormitory at the camp with adult chaperones or coaches in rooms at the end of each hall. Affidavits filed by former football players alleged that older players traditionally initiated freshman players by shaving their heads, trashing their dorm rooms, and other general horseplay. Evidence was conflicting as to whether the coaching staff was aware of or implicitly condoned the "ritual." During an afternoon break in the camp, the plaintiff was attacked and severely beaten by several members of the team. He was knocked unconscious and required hospital care. The plaintiff testified he had seen other initiations during the week, including the shaving of heads and the messing up of rooms by older players, but had not witnessed any other assaults.

The defendants filed a motion for summary judgment to dismiss based on claims of official immunity. The trial court granted the summary judgment, and the case was dismissed.

On appeal, the court of appeals upheld the trial court summary judgment. The court ruled that, under the Georgia Constitution, "public officers and employees of the County Board of Education...are entitled to official immunity, regarding any cause of action averred against them in their private capacity, when they are sued for discretionary acts taken within the scope of their employment and without actual intent to injure." Drawing upon what it deemed to be consistent rulings of Georgia appellate courts, the court held the supervision of student safety to be a discretionary function and, as such, one entitling school officials to official immunity.

The plaintiff argued that a state criminal statute against hazing transformed the duty of supervision to a ministerial function not protected by immunity. The plaintiff argued that the coaches did not have the discretion to participate in a crime or allow students under their care to participate in a crime. The court held that there was no evidence that

either coach was a party to the attack or allowed the attack to take place. The court concluded there was no evidence showing the coaches acted with malice toward the plaintiff by failing to stop the prior incidents involving the shaving of heads and shaving cream attacks or that these incidents created a climate in which an attack, such as the one on the plaintiff, would likely occur.

A strong concurring opinion was entered by a member of the court. The concurring opinion agreed with the majority's application of current Georgia law. However, the concurring judge raised strong concerns about holding supervision to be a discretionary function. He strongly recommended that both the appellate courts of Georgia and the legislature take another look at the duty to supervise. In support of his request, he highlighted certain facts entered into the record. He noted that the general consensus among team members was that they were allowed to haze younger players. One of the affidavits alleged that a player informed the coach that he did not want any part in the hazing. Three other affidavits stated that the coaching staff was aware of the hazing rituals. The coach testified that he had seen incidents in which the hair of players was cut but had not seen any other incidents of hazing. The head coach testified that he investigated the attack on the plaintiff but did not investigate whether hazing was a routine part of the camp. The coach acknowledged that no member of the staff spoke to the players about hazing.

The concurring judge stated he believed there was sufficient evidence to conclude that the head coach was aware of the hazing incidents and condoned them, despite their potential for harm. He described the result in this case as troubling because "school officials should not be immune from suit when they are in charge of supervising students and are acting in the place of the students' parents, but then fail to take precautionary measures to prevent students from being harmed by initiation rituals when the potential for harm is known to them."

Seamons v. Snow
15 F.Supp. 2d 1150

Issue: Hazing—Alleged violation of Title IX, constitutional due process, substantive due process, freedom of speech, equal protection, and equal education

Level of Court: U.S. District Court
Date/State: 1998/Utah
Decision: Defendant

The plaintiff, a member of his high school football team, was a victim of a hazing incident. Evidence indicated that five of the plaintiff's teammates assaulted him. After coming out of the shower, the players forcibly restrained the plaintiff and bound him naked to a towel rack while

other team members watched. One of the players then brought in a girl, whom the plaintiff had dated, to view him.

The plaintiff and his outraged parents reported the incident to the police, school district administrators, the principal, and the coach. The plaintiff and his parents met with the coach and the school principal. The coach stated that he would support the plaintiff if he chose to press criminal charges and that he would consider disciplinary charges against those involved in the assault. The plaintiff was encouraged to remain on the team. The plaintiff told the coach he would need to take some time before deciding whether or not to stay.

After missing three days of practice, the plaintiff informed the coach that he would like to stay on the team. The coach invited him to eat at the traditional pregame team spaghetti dinner that afternoon. After the dinner and before leaving for the game, the coach held a meeting with the plaintiff and the four team captains, two of whom were involved in the assault. The coach thought the meeting would help clear the air and mend some fences before the players reported to the sidelines. During the meeting, one of the players stated that he thought the plaintiff owed the team an apology for going to the authorities about the incident. The coach testified he was annoyed by and not in agreement with the player's comment. The plaintiff alleged that the coach stated he felt that the plaintiff needed to forgive and forget, apologize, and move on. The plaintiff responded he wasn't ready to do so. In a hurry to get to the waiting players on the bus, the coach told the plaintiff to take the weekend to think about it.

After the weekend, the plaintiff informed the coach that he was still going to play football but that he didn't feel like he needed to apologize and that he was not going to apologize. The plaintiff alleged that the coach responded, "Well, then, we can't have you on the team."

The plaintiff and his parents filed suit in federal court, alleging a violation of his constitutional rights. Specifically, the plaintiff alleged the district violated Title IX by creating and tolerating a hostile educational environment. He further alleged that his constitutional rights to due process, substantive due process, freedom of speech, equal education, and equal protection were violated by the district in their handling of the hazing incident. It was also alleged that the district failed to adequately train their coaches and administrators and that they conspired to deprive of him of his constitutional rights. The district moved for a summary judgment to dismiss all claims while alleging that the plaintiff's claims were legally deficient under applicable federal law. The court granted the district motion, and the plaintiff appealed.

The U.S. Court of Appeals upheld the rulings of the district court, with the exception of the ruling on the freedom of speech issue. The court of appeals held that the summary judgment on the freedom of speech issue was premature. This issue was remanded back to the district court.

On remand, the district court took note of conflicting testimony as to what the coach said regarding the request for an apology from the plaintiff. The court concluded that the evidence overwhelmingly supported the conclusion that the coach was supportive of the plaintiff, was willing to support him if he wanted to press criminal charges, wanted him back on the team, and was not punishing him for failing to apologize. The court found that the plaintiff was not asked to recant his allegations and that the coach simply was trying to have the players resolve their differences.

The court concluded that the facts did not support a finding that anyone punished the plaintiff for speaking out about the hazing incident or for refusing to recant his prior statements. The court stated that, if the facts supported the plaintiff's claims, summary judgment would not be appropriate. The court held that, although the hazing incident was repugnant and wrong, there simply was no constitutional basis to send the plaintiff's complaint to a jury. Summary judgment for the defendant school district was granted. The court did note, however, that the case "appears to give rise to valid assertions of violations of state law (assault and battery), perhaps state civil tort law, and of course public policy issues concerning the proper governance and administration of a public high school and the local school board."

Tryanowski v. Lodi Board of Education
643 A. 2d 1057

Issue: Hazing—Attempt by hazer to recover legal fees incurred from criminal action

Level of Court:	Superior Court
Date/State:	1994/New Jersey
Decision:	Defendant/Affirmed

The plaintiff was a party to a hazing incident that took place during a football camp sponsored by the school district. The plaintiff and several other boys held down another participant, poured offensive substances on him, and then shaved his head. As a result of the incident, the plaintiff had a juvenile criminal proceeding for assault brought against him, to which he pleaded guilty.

The plaintiff and his parents filed a motion with the court to file a late notice of claim against the school district. The plaintiff alleged that the hazing would not have occurred had there been adequate supervision. At the time of the incident, only one coach was on the premises and he was not on the floor of the dorm where the hazing incident occurred. The plaintiff contended that, as a result of the criminal proceeding against him, he suffered injury in the form of legal fees. He further contended that he stood to incur further expense if a civil lawsuit were brought against him.

The motion to file a late notice of claim was denied. The court ruled that, under the state tort claims act, a judge may deny the leave to file late where the judge concludes that the plaintiff fails to present a viable cause of action. The court concluded that, if by common law an "actively" negligent party cannot recover counsel fees, it would follow that one who commits an intentional tort and criminal act cannot collect counsel fees as well.

The court went on to hold that in this case the plaintiff was attempting to have the school district defend and indemnify him in a juvenile criminal proceeding. By statute, only public employees acting within the scope of their employment are entitled to such indemnification.

NOTE: Hazing potentially has heavy consequences for everyone involved. At the very heart of the hazing problem is the duty of supervision. Coaches and programs must have firm rules against hazing that are clearly communicated and consistently enforced. Hazing incidents leave someone with not only physical but also emotional scars. Coaches and school districts will be held liable for the aftermath of hazing when supervision is lacking. Those who initiate hazing leave themselves open to criminal as well as civil action.

In Summary

The Reasonably Prudent Physical Educator or Coach:

1. Develops comprehensive team and locker room rules and procedures, including those relative to acts of hazing, intimidation, harassment, and discrimination, and effectively communicates those rules to athletes.
2. Clearly communicates the consequences of all violations of established rules relative to hazing. Establishes an absolutely zero tolerance policy on hazing in any form.
3. Strictly and consistently enforces the established rules, procedures, and consequences.
4. Actively supervises where team members assemble, whether in the gym, on the field, on the bus, or in the locker room.
5. Does not unnecessarily absent him/herself from areas of supervisory responsibility.

Tangent Programs and Scope of Employment

Club Activities, Summer Camps, Summer Leagues, Enrichment Activities

Scope of employment can have major implications for the personal liability of teachers and coaches. Scope of employment is defined to include those acts of an employee that are done in the furtherance of duties he or she owes to the employer and where the employer is, or could be, exercising some control, either directly or indirectly, over the employee's activities. Physical educators and coaches often find themselves in a gray area where the question of scope of employment is not clear-cut. They often engage their students and athletes in activities related in purpose to their school programs yet not officially sponsored by the school or district. These activities usually occur either after school or during vacation periods. They include, but are not limited to, club activities, summer team camps, summer leagues, and enrichment activities. The following two cases and discussion are presented to help clarify the scope of employment issue and the concerns that need to be addressed by physical education and athletic personnel who engage in these activities that are tangent to the regular school program.

Rollins v. Blair
767 P. 2d 328

Issue: Liability for cheerleader injury during summer clinic

Level of Court:	State Supreme Court
Date/State:	1989/Montana
Decision:	Defendant/Affirmed

The plaintiff, a high school varsity cheerleader, injured her lower back in a fall from a pyramid being practiced by her cheerleading squad. At the time of the accident, the plaintiff and the rest of the school's cheerleading squad were attending a cheerleading camp that was being run by a private entity at Montana State University. The plaintiff brought suit against the camp sponsor, the National Cheerleaders Association, the high school, and the school district, alleging negligent supervision. The trial court awarded summary judgment for both the high school and school district, and the jury returned a verdict in favor of the program sponsor and the National Cheerleaders Association.

Testimony at the trial court indicated that the injury occurred during a free period before evening activities when the girls were practicing the "home cheer." The pyramid being practiced by the girls was one they had

practiced for over two months before coming to the camp and one that they had performed during past athletic contests. The plaintiff was aware that injury could occur from participating in pyramids because she had injured her ankle and another cheerleader had broken her ankle from previous falls prior to the camp. Testimony also showed that the cheerleader advisor for the plaintiff's high school attended the clinic and that transportation to the clinic was by a bus provided by the school. The funds to attend the clinic were raised by the girls themselves and deposited in school district accounts. Camp employees testified that a meeting was held at the beginning of the camp for all the advisors during which they were warned about safety precautions, such as spotting. The head instructor testified that the camp neither taught nor encouraged the practice of the pyramid. Evidence showed that the plaintiff's advisor did not attend the advisors' meeting, was not present at the time of the accident, and was not experienced in cheerleading.

The supreme court upheld the trial court decision for the defendants. The court held that the high school and school district were in no way involved with the camp, with the exception of providing a bus for transportation. The court held that the high school was not liable for any negligence on the part of the squad advisor. This holding was based on the fact that she was not under contract with the school district during summer months, she used her own funds to attend the camp, and her attendance was personal and not as an employee of the school. They held that the advisor in this situation was not an agent of the district and, therefore, the district owed no duty to the plaintiff under the doctrine of respondeat superior. The court further ruled that there was no reversible error on the part of the district court that would allow a reversal of the jury verdict in favor of the camp sponsor.

NOTE: Physical educators and coaches often find themselves involved in activities outside the immediate scope of the school program. These activities, such as team camps and summer club activities and competition, are usually intended to give students and athletes additional opportunities to develop their skills. They are clearly used to help further develop school programs. It is important that teachers and coaches who become involved in these programs take steps to protect themselves in case of litigation.

In a good number of states where immunity has been abrogated by tort claims acts, teachers and coaches are protected from financial liability by hold-harmless statutes. A hold-harmless statute requires a school district to indemnify its employees against liability for their actions occurring within the scope of their employment. For those actions falling outside the scope of their employment, teachers and coaches are personally liable. If a teacher or coach is going to involve him/herself and

student athletes in tangent activities such as team camps, summer leagues, or club competition, it is a good idea to involve the school and administration to the greatest degree possible. Use of school facilities, school equipment, school uniforms, and school or student body funds, and the knowledge of and any exercise of control over the activities by the administration, will all be factors considered in determining whether the activity falls within the full scope of employment. Scope of employment is not merely a function of regular work hours or contract year.

In the case discussed here, the cheerleader advisor was found to be acting outside the scope of her employment. Not only did the activity occur during the summer vacation months, but also the involvement of the school district was nonexistent, with the exception of providing bus transportation. If the district is not sufficiently entangled in the activity and any question exists as to whether a tangent activity falls outside the scope of employment, teachers and coaches involved in such activities would be wise to protect themselves with personal liability insurance.

Myricks v. Lynwood Unified School District

87 Cal.Rptr. 2d 734

Issue: Driver of van falls asleep while transporting basketball team

Level of Court:	Court of Appeals
Date/State:	1999/California
Decision:	Defendant/Affirmed

Members of a girls' basketball team brought suit against both the school district and the city as well as the team coaches after the driver of the van in which they were riding fell asleep and lost control of the vehicle. Submitted evidence indicated that the summer team had served in the past as a de facto developmental team for the high school program.

The team was run by the high school coach and used the high school's equipment and uniforms. Consent forms were signed prior to participation, but evidence indicated that there was confusion on the part of at least some of the parents as to whether they were signing for participation for the summer team or the school team. As per California Interscholastic Federation rules, the high school coach did not have contact with the girls until June in order to sidestep any violation of the rule forbidding coaches from coaching out-of-season competition during the school year. The previous coach had violated this rule and subsequently resigned in order to spare any sanctions against the team. The court noted that the record was silent as to whether the previous coach had obtained permission from the high school or district to use the high school gym, basketballs, and practice uniforms. The record did indicate that the current coach did not ask for permission.

In seeking funding for the summer season, which involved considerable road travel, the coach approached both the school as well as the city council. No funding was provided through the school, and the coach was not a paid employee during the summer months. The assistant coach was a part-time school district employee as well as a city employee but was not compensated by either for her time on the trip. The city council agreed to pay $10,000 directly to the team vendors and asked the team to submit an itemized list of expenses for hotel, car rental, and tournament expenses. All other expenses were paid by the coach and other private donors.

The team's schedule included a road trip with tournaments in Arizona, Colorado, and Nevada. The coach did not have a valid California driver's license, yet he drove for much of the trip, which began in Lynwood, California, on July 7. Evidence was undisputed that the accident occurred just outside Las Vegas on July 23, at about 6:40 a.m., after they had driven all night from Colorado. It was also undisputed that the van in which the players were riding rolled over when the driver, the assistant coach, fell asleep at the wheel. The assistant coach testified she got tired after driving for about an hour and a half and pulled in at a rest stop to rest for a couple of hours. After starting to drive once more, she again became fatigued. The head coach took over driving for a couple of hours and then turned the driving back over to the assistant coach. The assistant coach pulled over twice more before the accident, due to fatigue. She testified she dozed off and awoke with the vehicle off of the road surface. All occupants of the van were injured, and one girl died at a hospital.

The district and the city both filed a motion with the trial court for a summary judgment to dismiss. The school district argued that this was not an official school-sponsored activity and that the coach was not a paid district employee during the summer months. The coach had not sought nor received any administrative approval for the trip. The city argued that the van driver, who was a city employee, was not acting within the scope of her employment on the trip. They alleged she was not on the submitted list of people going on the trip and in fact was scheduled to be at work and simply did not show up. The trial court granted summary judgment on behalf of the school district and the city, and the plaintiffs appealed.

The court of appeals upheld the summary judgment for both the school district and the city. The court held that the school district was not liable under any construction of the law. The court ruled that the evidence sufficiently supported the determination that the trip was not an official school-sponsored activity. The court held that if the basketball trip was a voluntary field trip or excursion related to the school basketball program, the waiver provision of the California Education Code would apply. This section of the code states that, if a person is injured while on a field trip or excursion "related to courses of instruction or school-related social, educational, cultural, athletic, or school band activities, he/she will be deemed to have waived all claims against the district or the state of

California for injury, accident, illness, or death occurring during or by reason of the field trip or excursion." The court stated that, if the trip was an entirely private enterprise, then neither the head nor the assistant coach would have been acting within the scope of their employment and therefore the district could not be held liable.

The court ruled that the city exerted no control over the team or the planning, scheduling, or execution of the trip and that the city could not be held liable as a matter of law. The court agreed with the city argument that the assistant coach was in no way acting within the scope of her employment as a city employee.

The finding of the court of appeals left the coaches to stand alone in this suit.

NOTE: This case raises issues for both transportation of student-athletes as well as teacher/coach involvement in tangent programs. Transportation of student-athletes by anything other than chartered or school bus by licensed drivers presents many potential liability issues. Policies and procedures should be carefully adopted that address the requirements for driver licensing, the permitted maximum amount of on-duty time within a 24-hour period, maximum permitted driving time, and insurance coverage.

The coaches in this case have been left alone to face the allegations of negligence. It is critical that teachers and coaches involved in activities such as the one in this case do all that they can to involve the school and the district in the approval, planning, and funding of these activities that are tangent to school-based programs. If unsuccessful in involving the school and school district, teachers/coaches should not embark on these types of activities without first securing adequate personal insurance coverage designed to cover their involvement and potential responsibility for injury.

In Summary

The Reasonably Prudent Physical Educator or Coach:

1. Informs and involves the school administration and the school district to the greatest extent possible in all tangent activities in which he/she involves students or athletes.
2. Secures personal liability insurance to provide protection for all tangent activities that might fall outside "the scope of employment."

Practicum Students, Student Teachers, and Volunteers

The use of practicum students and student teachers is commonplace in a good number of elementary and secondary school programs. Although field-based experience programs fulfill an important state objective in training prospective teachers, a number of issues and concerns relative to liability arise due to the inexperience these individuals bring to the school program.

Practicum students and student teachers are held to the same standard as an experienced teacher. They are expected to act in the manner of a reasonably prudent person who is qualified and trained to carry out the responsibilities of teaching and/or coaching. In the event of an injury, their actions will be gauged against the accepted standards employed in the field and endorsed by professional organizations and literature. Their actions will not be discounted in any way due to their lack of experience. The same is true for teacher aides who are left in charge of classes.

The question becomes, who is liable for injuries occurring in a practicum or student teaching situation? As with anyone, practicum students and student teachers are liable for their own acts and omissions. Can the cooperating teacher, supervising teacher, school district, and university be liable for injuries occurring to students or athletes under the control of the practicum student or student teacher? The answer is, clearly, yes!

The individual financial liability of the practicum student or student teacher can vary from jurisdiction to jurisdiction. Sometimes these students are paid a nominal salary enabling them to be clearly identified as a district employee and thereby covered by the insurance afforded to all other employees. They are often asked by their universities to purchase liability insurance to protect them during the course of their assignments. Many states have enacted statutes granting student teachers and practicum students the status of an agent of the school, which thereby extends the same liability protection to them as is extended to regular certified teachers. This status conferred by statute also extends hold-harmless or indemnification protection in many of the states where such legislation protects regular employees.

State statute and supporting administrative rules may, in many circumstances, dictate the duties and responsibilities that a practicum student or student teacher may or may not assume. It is important that any cooperating teacher fully understands his/her state statutes as they relate

to student teachers. It is also imperative that the cooperating teacher fully understands the rules and guidelines for the practicum or student teaching experience. These are included in the contract between the sponsoring university and the cooperating school district.

Student teachers stand in the same relationship to their supervising and cooperating teacher as any other employee to his/her immediate supervisor. This relationship and the doctrine of respondeat superior dictate a number of responsibilities, duties, and concerns for the cooperating teacher and his or her school district. Of particular importance is an assessment of the practicum student or student teacher's abilities as well as areas of weakness. This can be accomplished through a review of his or her transcript as well as a conference with the student and the supervising teacher from the university. This should be done prior to commencing the practicum or student teaching experience. The administration as well as the cooperating teacher should insure that the prospective practicum student or student teacher is provided adequate orientation to the teaching and school situation to which he/she is assigned. Most critical, the cooperating teacher needs to provide active, ongoing supervision. Although the practicum student or student teacher can be held personally liable, the cooperating teacher still retains legal control and responsibility for the class assigned to him or her. That responsibility cannot be delegated away. The supervision and control exerted over the student teacher and the classroom must meet the reasonable and prudent standards as dictated by accepted professional practice and by guidelines set forth in the contract between the school district and the sponsoring university.

Volunteers in physical education classes and in athletics can be a valuable resource in the running of quality programs. It is important, however, that teachers and coaches supervise the activities of the volunteer closely. The teacher or coach retains the legal responsibility for the class or team and will be held accountable for any decisions to delegate instructional or supervisory responsibility to the volunteer. Therefore, teachers and coaches need to assess the capabilities of their volunteers before giving them any responsibility and need to make sure they are thoroughly acquainted with the activity, rules, guidelines, and procedures being employed within the activity, as well as all concerns for both student/athlete and volunteer safety.

Although the amount of litigation in this area has been minor, the need for concern is very real in a time where litigation continues to increase significantly.

Yarborough v. City University of New York
520 N.Y.S 2d 518

Issue: Equipment dangerous for its intended use supplied by student teacher

Level of Court:	Court of Claims
Date/State:	1987/New York
Decision:	Plaintiff

The plaintiff, an elementary education major enrolled in a physical education methods course, received injuries as a result of her participation in class. Testimony indicated that, on the day of the accident, instruction was being given by one of the students under the supervision of the professor in charge of the class. The class session for this day focused on relays. The plaintiff was injured while participating in a sack race on the gym floor. The plaintiff fell as she made her turn for the finish. The student assigned to prepare the activity explained how the race was to be run, demonstrated how it was to be run by hopping with both feet in the bag, divided the class into two teams, and provided each team with a plastic garbage bag. No instruction was given relative to the positioning of the students' feet within the bag.

The Court of Claims held that a teacher is under a duty to use reasonable care to prevent injury to students. The court ruled this duty includes not directing students to do something that is unreasonably dangerous and insuring that equipment supplied to students is reasonably safe for its intended use. It also held that the duty includes providing reasonable instruction and supervision that allows students to safely perform the assigned tasks or use the supplied equipment. The court ruled that the defendant breached this duty by allowing or requiring students to perform the relay race on a wooden floor, using a plastic bag. The court agreed with the expert testimony that indicated this created a foreseeable risk of injury. The court held that the risk of injury was further enhanced by the instructor's failure to instruct the plaintiff on the proper technique for performing the task, specifically, keeping the feet together. The court found the defendant 75% negligent while holding the plaintiff 25% contributorily negligent.

Mercantel v. Allen Parish School Board

490 So. 2d 1162

Issue: Improper Supervision—Teacher aide left in charge of class

Level of Court: State Court of Appeals
Date/State: 1986/Louisiana
Decision: Plaintiff/Modified and affirmed

The plaintiff, a 12-year-old seventh grader, fractured his femur during his physical education class while playing a makeshift football game using a paper cup. Evidence at the trial court indicated that the physical education teacher was called to the principal's office for a conference, and a teacher aide was sent to cover the class. During the teacher's absence, the makeshift game, which included tackling, got underway. The accident occurred toward the end of the period, and testimony was conflicting as to whether or not the teacher had returned to the class prior to the injury occurring.

The game had lasted somewhere between 10-20 minutes. As a result of the accident, the plaintiff spent five and a half weeks in the hospital in traction and then was placed in a cast from the chest down for an additional five to six weeks at home. Once out of the cast, he was confined to a wheelchair for another month and a walker for two months after that. As a result of the injury, the plaintiff suffered a premature closure of the growth plate in his right leg, which is now two and a half inches shorter than his left.

The trial court found the district negligent for failing to properly supervise the class but absolved both the teacher and the teacher aide of all liability. The trial court awarded $200,000 for the plaintiff. The decision was appealed by both the plaintiff and the defendant.

On appeal, the appellate court stated that the trial court apparently based its finding against the district on negligence for withdrawing the qualified teacher from the class, which, the court noted, implied the teacher had not returned to the class prior to the accident. The testimony of the teacher and three of the students was contrary, however. The appellate court concluded that the teacher had returned and ruled the trial court in error for holding the school negligent for failing to provide adequate supervision.

The court held that the teacher aide owed no duty to the students once the teacher had returned. The court stated that the game being played by the boys was a normal activity for boys this age and was one probably played at home as well. Although saying it hesitated to find that the teacher had breached her duty in this case, the court held that it felt bound to consider the testimony of the teacher, who said she "considered it her duty to stop rough-housing and that she would have stopped the game had she seen it." Noting that the evidence supported the conclusion that the

game had gone on for some 10-20 minutes, the court ruled that the teacher should have noticed the activity within that time.

The appellate court held the teacher to be 5% negligent. The decision left the plaintiff with a $10,000 judgment. However, the plaintiff was left to pay 95% of the trial and appellate court costs, with the defendant responsible for the remaining 5%.

NOTE: The finding of this court is bizarre at best and certainly should not be relied on for precedent of any kind. The case does, however, present a couple of important considerations for physical educators and coaches. Although some teacher aides hold valid teaching certificates, most do not. Without a valid teaching certificate, they cannot legally assume solo responsibility for classroom instruction. Even where they possess a valid certificate, the regular teacher is the one who has the assigned responsibility for the class and assumes supervisory responsibility over the actions of the aide. Before delegating any responsibility for instruction to an aide, a great deal of communication about activities, progressions, and classroom expectations needs to take place. Second, the appropriateness of an activity needs to be closely scrutinized. What students do at home or away from school in unsupervised situations should not serve as a guide to what is appropriate in an instructional program.

The finding in this case could have been weighted much heavier, if not completely, in favor of the plaintiff. In addition to the legal and prudent use of teacher aides, the court should have been asked to examine the appropriateness of the activity and where it fits into the district curriculum. The lack of safety equipment where tackling occurs and the adequacy of both the instruction and supervision within the class should have been challenged as well.

Brahatcek v. Millard School District No. 17
273 N.W. 2d 680

Issue: Inadequate supervision by student teacher—
Student absent on day of safety instruction in golf class

Level of Court:	State Supreme Court
Date/State:	1979/Nebraska
Decision:	Plaintiff/Affirmed

A 14-year-old boy was fatally injured during a physical education class when a classmate accidentally struck him with a golf club. The evidence showed that the plaintiff's son was absent on the first day of the unit when the rules of safety were discussed. Two teachers were assigned to the combined class of boys and girls, with a total of 57 students

enrolled. On the first day, in addition to safety instruction, students were instructed on the golf grip, stance, and swing.

One of the regular teachers was absent the day of the accident, the second day of the unit. His place was taken by a student teacher who had been at the school for five weeks and had assisted with 4-6 golf classes on the previous two days. The regular teacher present repeated the instructions and divided the class into small groups to practice the grip and swing.

The plaintiff's son had never swung a golf club and, when his turn came, he asked for help. A classmate volunteered to demonstrate the proper stance and grip and to demonstrate a few practice swings. The plaintiff's son moved closer to the boy demonstrating, who was unaware anyone was standing near him. While observing a swing, the plaintiff's son was struck in the head by the golf club. The blow rendered him unconscious, and he died two days later without regaining consciousness.

Testimony showed that on Monday, the first day of instruction, one person from each group would walk up to their respective mats. The two regular instructors would see to it that only one individual was at each mat when the students were to commence their swings. They would walk back and forth behind the students who were hitting, offering individual instruction and at the same time making sure no other students were up and in the way. On Tuesday, the second day, this procedure was not followed. Testimony indicated there was a fair amount of milling around by students. After giving the beginning instructions, the regular teacher focused her attention on the girls in the class. At the time of the accident, the student teacher was giving individualized instruction to a boy at one of the mats. It was clear from the evidence that general supervision of the entire group was lacking. Expert testimony stressed the importance of having the entire class in view. Given the nature of the activity, expert testimony indicated that a whistle should have been blown and the class stopped if and when it became necessary to give a student individualized instruction. It was argued that, had the same procedures used on the first day been followed, students would not have been assisting one another, and the risk of harm to the deceased would have been observed. The student teacher testified that he had no lesson plan because the regular teacher was going to handle that. He further stated he gave no oral instructions to any of the students as a whole.

The parents of the deceased based their wrongful death suit against the district on negligent supervision. The defendants claimed that the action of the fellow student was an intervening cause of the accident and that they were thereby relieved of any negligence. In addition, they claimed the deceased was contributorily negligent.

The trial court ruled that the district was negligent in its supervision of the golf class and that there was no evidence to support a claim of

contributory negligence on the part of the deceased. The court held that the deceased could not have appreciated the danger of the situation because he had never played or become familiar with the sport and had received absolutely no instruction due, in part, to his absence the previous class period. The court held that the district should have been able to foresee the danger that could result from an activity such as this one when dealing with a group of inexperienced ninth graders. The court ruled that the lack of proper supervision was the proximate cause of the student's death. The supreme court upheld the $53,470 in damages awarded by the trial court.

Murray v. Zarger
642 A. 2d 575

Issue: Volunteer coach acted as an agent of the school district when transporting team members to a swim meet

Level of Court:	Commonwealth Court of Pennsylvania
Date/State:	1994/Pennsylvania
Decision:	Plaintiff/Reversed/Reversed

The plaintiff's daughter suffered fatal injuries as a result of a car accident while being transported to a swim meet with two other members of her swim team. The driver of the vehicle was a volunteer coach. Evidence presented at trial indicated that the new head coach had solicited the services of the volunteer coach and had given him a small sum of money in compensation for his time. Administrators within the district were aware of the arrangement between the head coach and the volunteer coach. The volunteer coach helped with the divers during both practice sessions and meets. He was sometimes asked to help with transportation as well and received reimbursement for his expenses from the school district. The divers practiced at a facility 12 miles from the school.

The head coach testified he had requested a school district van to transport the team on the day of the accident. After being informed that no van was available, he requested that the assistant coach help drive the team members to the meet. The head coach gave the volunteer coach his car to use. On the way to the meet, the vehicle was involved in a serious accident in which the plaintiff's daughter was killed.

The plaintiff brought suit against the school district, the head coach, and the volunteer coach. The school district filed for a summary judgment, alleging that the vehicle involved in the accident was not in control of the school district and that the driver of the vehicle was not an employee of the district. The trial court denied the motion. Both the head coach and the volunteer coach requested the court's permission to plead governmental immunity. The school district subsequently assumed the head coach's defense but not that of the volunteer coach. The volunteer coach requested a partial summary judgment from the trial court, seeking a

declaration that he was for all intents and purposes an employee of the school district and entitled to indemnification under the tort claims statute. The trial court approved the motion. The school district appealed, and the commonwealth court reversed the summary judgment and remanded the case back to the trial court. On remand, the trial court found that the volunteer coach was not entitled to indemnification under the tort statute.

On further appeal by the volunteer coach, the commonwealth court held that the volunteer coach was entitled by law to indemnification by the school district. The appellate court examined the definition of *employee* under the statute and noted that *employee* was defined as "any person who is acting or who has acted on behalf of a government unit, whether permanent or temporary, whether compensated or not and whether within or without the territorial boundaries of the government unit." The commonwealth court ruled that the volunteer coach was a school district employee for purposes of indemnification since he was acting on behalf of the school district and was authorized to transport the team members to the meet. The court held that the volunteer coach had a good faith reasonable belief that the transportation of the team members was one of his duties as a volunteer assistant coach.

Esposito v. Carmel Central School District
640 N.Y.S. 2d 606

Issue: Volunteer injured by hit ball during batting practice

Level of Court: Supreme Court, Appellate Division
Date/State: 1996/New York
Decision: Defendant/Affirmed

The plaintiff, a college baseball player, received injuries when hit in the eye by a baseball while pitching batting practice for a high school baseball team. In his action against the school district, the trial court dismissed the case, and the plaintiff appealed.

The appellate court upheld the lower court dismissal while holding that the plaintiff was an experienced baseball player fully aware of the risks of baseball, including that of a ball being hit directly back at the pitcher. The plaintiff participated voluntarily and was not compelled in any way to participate. The court ruled there was absolutely no evidence to support that the risk of injury was concealed or unreasonably increased in any way and that the plaintiff had, therefore, fully assumed the risk of participation.

NOTE: Not all volunteers, especially those in physical education classes or those helping out with younger athletes, are experienced in the activities they help out with. When using volunteers, teachers and coaches would be prudent to not only carefully outline their duties and responsibilities but to advise them of safety concerns and issues relative

to both their safety and the safety of those with whom they will be working. Volunteers remain the supervisory responsibility of those in charge of the class or team, and all procedures designed for safety and effective instruction must be monitored for compliance by the supervisor in charge.

In Summary

The Reasonably Prudent Physical Educator or Coach:

1. Is well informed of all requirements and guidelines relative to the use of practicum students and student teachers included in the contract between the university and the cooperating school district.
2. Is well informed of any state statutes regulating the duties and responsibilities that practicum students and student teachers may assume.
3. Provides ongoing and direct supervision to any practicum student or student teacher under his/her control.
4. Adequately assesses and/or evaluates the capabilities, strengths, and weaknesses of the practicum or student teacher before allowing him or her to assume any duties.
5. Provides the student teacher or practicum student with a copy of the district curriculum guide, department and school policy handbooks, state activity association rulebooks, and a copy of emergency first-aid procedures, including appropriate phone numbers.
6. Reviews and approves all unit plans as well as all daily written lesson plans.
7. Retains control over the class or team.

Substitute Teachers

School board policy, as well as professional practice, suggest that teachers have a duty to provide substitute teachers with adequate and complete lesson plans when they are absent from duty, whether for illness, professional activities, or personal leave. The purpose of these plans is to allow the orderly continuance of the educational process. In the physical education setting, this means not only continuance of the unit but also the safe and proper conducting of the activities themselves.

Although substitute teachers will clearly be held liable for their own negligent acts, some case law exists that suggests absent teachers might also be held accountable for injuries that occur in their classrooms while under the charge of a substitute. A key element in negligence is foreseeability. Teachers owe a duty of reasonable and ordinary care under the circumstances any time a foreseeable risk of harm exists. Substitutes entering a classroom are at a distinct disadvantage in that they have little or no knowledge of the class, or the students in that class, prior to their actual arrival. Their lack of knowledge and understanding can, in many circumstances, put them in a situation where they are unable to foresee risks that would be easily foreseeable by the regular teacher. This is a situation that can be easily remedied by a complete and detailed lesson plan.

In Larson v. Independent School District, 289 N.W. 2d 112 (1980), previously discussed in the section on supervision, a student suffered paralyzing injuries in a gymnastics class that had been taken over just nine days earlier by a new teacher. The court requested the defendant to supply the lesson plans in order to show the teaching progressions employed. If a student were injured in a gymnastics class being taught by a substitute, there is no reason to believe that the progression of skills employed prior to the injury would not still be at issue. It is important that lesson plans left for substitutes properly fit into and address the issue of skill progressions. The lesson plan should adequately outline the skills to be taught, the rules to be employed, the drills to be used, and the safety instructions to be given. In short, the lesson plan should sufficiently detail the lesson to be carried out.

In another case previously discussed in this section, Brahatcek v. Millard School District, 273 N.W. 2d 680 (1979), a point was made during trial of the fact that a student teacher, who substituted for a regular teacher on the second day of a golf unit, did not have a lesson plan nor did he receive any instructions from either the absent teacher or the other teacher about the class activity. As a result of negligent supervision, a young man died from injuries received in the class. Substitutes should not be left in charge without supplying them with a lesson plan.

In yet another previously discussed case in the supervision section, Cook v. Bennett, 288 N.W. 609 (1979), an absent teacher was named as a

injuries received in the game "kill" during recess. Evidence indicated that the game, which included group tackling, was played on numerous previous occasions with the apparent approval of both the teacher and principal. The court found the game to be ultrahazardous and held the principal negligent for his supervision of both staff and students. Although the absent teacher was not held negligent in this case, the case nonetheless shows a willingness on the part of plaintiffs to hold absent teachers accountable for injuries that occur during their absence and for which they are perceived to play a contributing role.

In both Summers v. Milwaukie Union School District, 481 P. 2d 369 (1971) and Luce v. Board of Education, 157 N.Y.S. 2d 123 (1956), the issue was one of the prior medical condition of students. The students in these cases received injuries while participating in activities they were either excused from by doctor permission or should have been exempted from due to medical conditions or prior injury. The duty of physical educators and coaches to be aware of the health status of students under their charge is clear. In the absence of a lesson plan alerting them to such circumstances and conditions, the substitute is in no position to adequately foresee the risks posed by activity to students who should legitimately be precluded from participating for one reason or another. This was precisely the case in Henrich v. Libertyville High School, 712 N.E. 2d 298 (1998) discussed previously in the section on supervision. In Henrich, a student suffered a serious and permanent back injury during a class being taught by a substitute teacher while participating in an activity from which he was to have been exempted as per doctor's orders. The substitute was not made aware of the student's medical restriction, which was a part of his permanent record.

Awareness of special discipline problems is also needed by substitutes, who are expected to maintain an orderly and safe instructional environment in the absence of the regular teacher. Lack of awareness was at issue in the case of Ferraro v. Board of Education of the City of New York, 212 N.Y.S. 2d 615 (1961). In this case, a student was injured after being assaulted by another student in a class that was overseen by a substitute teacher. Evidence at trial indicated that the attacking student had been transferred from another school earlier in the year because of discipline problems and had been a chronic behavior problem since enrolling. Although the classroom teacher was not a defendant in this case, the court held the principal liable. Testimony established that the substitute had received no information relative to the disruptive student prior to assuming her duties. In holding the principal liable, the court stated, "It is clear that the assault itself cannot be the basis for liability of the defendant. It is the failure of the principal to have alerted the substitute, thereby depriving her of the opportunity of using her own judgment, which I believe constitutes the negligence in this case. Had she been told, she would have been in a position to decide whether

anything further was required to reasonably be done to avoid the trouble."

Much of the needed information referred to above can be printed up and filed so that it can be easily attached to the daily activity plan when absence by the regular teacher is required. Only through a complete and detailed lesson plan can the substitute be in a position to adequately foresee many of the risks confronting group activity.

In Summary

The Reasonably Prudent Physical Educator or Coach:

1. Provides a detailed lesson plan for use by the substitute teacher, including safety precautions and progressions to be followed.
2. Alerts the substitute teacher to any student who is precluded from full participation due to illness, injury, or medical exemption.
3. Alerts the substitute of any student with required modifications to activity or any other special needs.
4. Alerts the substitute teacher to chronically disruptive or physically aggressive students.
5. Alerts the substitute to any known hazardous conditions within the facilities or grounds.
6. Avoids having unknown substitutes carry on any activities that contain an elevated risk of injury.
7. Provides the substitute with the names of a couple of nearby staff who can assist in an emergency.

Coaching Behavior

Darnell v. Houston County Board of Education
506 S.E. 2d 385

Issue: Basketball official charges middle school coach with assault and verbal abuse

Level of Court:	Court of Appeals
Date/State:	1998/Georgia
Decision:	Defendant/Affirmed in part, reversed in part

The plaintiff, a basketball official, filed suit seeking damages for incidents occurring during and after a middle school basketball game that he officiated. Trial testimony indicated that the plaintiff called a technical on the coach of one of the teams after the coach became upset with a call. After receiving the technical, the coach continued to berate the officials, calling them names and using foul language. The coach allegedly "slammed his body into him and bumped him." The plaintiff gave the coach a second technical and ejected him from the game.

After the game, the school principal instructed two security guards to remove the official for security reasons, fearing the possibility of trouble due to the intense rivalry between the two schools. The official intended to await the arrival of a police officer to discuss the possibility of criminal charges against the coach. When he refused to leave and resisted, the security officers escorted him out anyway. The plaintiff brought suit against the coach, the school board, the principal, and the two security guards. He sued the coach for verbal abuse and for bumping him. He charged the board and the principal with failing to insure his safety and for failing to properly instruct and supervise the coach. Charges of false arrest and use of excessive force were brought against the two security officers.

The trial court entered a summary judgment for all defendants and dismissed the case. The trial court decision was based upon its ruling that all of the defendants were protected by sovereign and official immunity. The plaintiff appealed the trial court decision.

On appeal, the Georgia Court of Appeals upheld the dismissal against the school board, principal, and security officers. The court held that sovereign immunity extends to the state and all of its departments and agencies unless specifically modified by legislative enactment. Finding no such legislative enactment, the court ruled that the school board was protected by sovereign immunity. The court held that the principal was protected by official immunity and that the security officers were protected by qualified immunity for discretionary acts.

The court of appeals found that the dismissal of the action against the coach was improper. The court ruled that a cause of action for assault and battery could be supported by even minimal touching. The court noted that unlawful touching includes "offensive touching which proceeds from anger or rudeness" and that the test is "what would be offensive to an ordinary person not unduly sensitive as to his dignity." The court ruled that a jury must determine whether the coach's conduct constituted willful or malicious conduct falling outside the protection of immunity.

Glossary of Terms

All definitions are taken from the 7th edition of *Black's Law Dictionary* (West Publishing Co., St. Paul, MN, 1999).

Abrogate: To abolish (a law or custom) by formal or authoritative action: to annul or repeal.

Age of Majority: The age, usually defined by statute as 18 years, at which time a person attains full legal rights, esp. civil and political rights such as the right to vote.

Age of Reason: The age at which a person becomes able to distinguish right from wrong and is thus legally capable of committing a crime or tort. The age of reason varies from jurisdiction to jurisdiction, but 7 years is usual, the age below which a child is conclusively presumed not to have committed a crime or tort, while 14 years is usually the age below which a rebuttable presumption applies.

Assumption of Risk: The principle that one who has taken on oneself the risk of loss, injury, or damage consequently cannot maintain an action against the party having caused the risk.

Attractive Nuisance Doctrine: The rule that a person who owns property on which there is a dangerous condition that will foreseeably lure children to trespass is under a duty to protect those children from the danger.

Battery: The application of force to another, resulting in harmful or offensive contact.

Breach of Duty: The violation of a legal or moral obligation; the failure to act as the law obligates one to act.

Burden of Proof: A party's duty to prove a disputed assertion or charge.

Common Law: The body of law derived from judicial decisions, rather than from statutes or constitutions; case law.

Comparative Negligence Doctrine: The principle that reduces a plaintiff's recovery proportionally to the plaintiff's degree of fault in causing the damage, rather than barring recovery completely.

Compensatory Damages: Damages sufficient in amount to indemnify the injured person for the loss suffered.

Concurring Opinion: A vote cast by a judge in favor of the judgment reached, often on grounds differing from those expressed in the opinion or opinions explaining the judgment.

Contributory Negligence: A plaintiff's own negligence that played a part in causing the plaintiff's injury that is significant enough (in a few jurisdictions) to bar the plaintiff from recovering damages.

Damages: Money claimed by or ordered to be paid to a person as compensation for loss or injury.

Declaratory Judgment: A binding adjudication that establishes the rights and other legal relations of the parties without providing for or ordering enforcement.

Defendant: A person sued in a civil proceeding or accused in a criminal proceeding.

Demurrer: A pleading stating that although the facts alleged in a complaint may be true, they are insufficient for the plaintiff to state a claim for relief and for the defendant to frame an answer.

Deposition: A witness's out of court testimony that is reduced to writing for later use in court or for discovery purposes.

Directed Verdict: A judgment entered on the order of a trial judge who takes over the fact finding role of the jury because the evidence is so compelling that only one decision can reasonably follow or because it fails to establish a prima facie case.

Discretionary Act: A deed involving an exercise of personal judgment and conscience.

Dissenting Opinion: An opinion by one or more judges who disagree with the decision reached by the majority.

Duty: A legal obligation that is owed or due to another and that needs to be satisfied; an obligation for which somebody else has a corresponding right.

Exculpatory Clause: A contractual provision relieving a party from any liability resulting from a negligent or wrongful act.

Expert Witness: A witness qualified by knowledge, skill, experience, training, or education to provide a scientific, technical, or other specialized opinion about the evidence or a fact issue.

Foreseeability: The quality of being reasonably anticipatable. Foreseeability, along with actual causation, is an element of proximate cause in tort law.

Governmental Function: A government agency's conduct that is expressly or impliedly mandated or authorized by constitution, statute or other law and that is carried out for the benefit of the general public.

Governmental Immunity: A government's immunity from being sued in it's own courts without its permission.

Gross Negligence: A lack of slight diligence or care. A conscious, voluntary act or omission in reckless disregard of a legal duty and of the consequences to another party, who may typically recover exemplary damages.

Hold Harmless: To absolve (another party) from any responsibility for damage or other liability arising from the transaction.

Hold Harmless Agreement: A contract in which one party agrees to indemnify the other.

Implied Warranty: A warranty arising by operation of law because of the circumstances of a sale, rather than the seller's express promise.

Implied Warranty of Fitness for a Particular Purpose: A warranty—implied by law if the seller has reason to know of the buyer's special purposes for the property—that the property is suitable for those purposes.

Indemnify: To save harmless; to secure against loss or damage; to give security for the reimbursement of a person in case of an anticipated loss falling upon him.

In Loco Parentis: Acting as a temporary guardian of a child

Intervening Cause: An event that comes between the initial event in a sequence and the end result, thereby altering the natural course of events that might have connected a wrongful act to an injury.

Invitee: A person who has an express or implied invitation to enter or use another's premises.

Public Invitee: An invitee who is invited to enter and remain on property for a purpose for which the property is held open to the public.

Joint Tortfeasors: Two or more tortfeasors who contributed to the claimant's injury and who may be joined as defendants in the same lawsuit.

Judgment: A court's final determination of the rights and obligations of the parties in a case.

Judgment Notwithstanding the Verdict: A judgment entered for one party even though a jury verdict has been rendered for the opposing party.

Jurisdiction: A court's power to decide a case or issue a decree.

Leave of Court: Judicial permission to follow a non-routine procedure.

Liable: Responsible or answerable in law; legally obligated.

Litigation: The process of carrying on a lawsuit.

Malfeasance: A wrongful or unlawful act; wrongdoing or misconduct by a public official.

Ministerial Act: Of or relating to an act that involves obedience to instructions or laws instead of discretion, judgment, or skill.

Misfeasance: A lawful act performed in a wrongful manner.

Negligence: The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregardful of other's rights.

Nonfeasance: The failure to act when a duty existed.

Plaintiff: The party who brings a civil suit in a court of law.

Precedent: The making of law by a court in recognizing and applying new rules while administering justice. A decided case that furnishes a basis for determining later cases involving similar facts or issues.

Preponderance of Evidence: The greater weight of the evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

Prima Facie: Sufficient to establish a fact or raise a presumption unless disproved or rebutted.

Proximate Cause: A cause that is legally sufficient to result in liability. A cause that directly produces an event and without which the event would not have occurred.

Prudent: Circumspect or judicious in one's dealings; cautious.

Punitive Damages: Damages awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit. Punitive damages are intended to punish and thereby deter blameworthy conduct.

Question of Fact: An issue that has not been predetermined and authoritatively answered by the law. An issue that does not involve what the law is on a given point. A disputed issue to be resolved by the jury in a jury trial or by the judge in a bench trial.

Question of Law: An issue to be decided by the judge, concerning the application or interpretation of the law. A jury cannot decide questions of law which are reserved for the court.

Reasonable: Fair, proper, or moderate under the circumstances.

Remand: The act or an instance of sending something (such as a case, claim, or person) back for further action.

Res Ipsa Loquitur: The doctrine providing that, in some circumstances, the mere fact of an accident's occurrence raises an inference of negligence so as to establish a prima facie case.

Respondeat Superior: The doctrine holding an employer or principal liable for the employee's or agent's wrongful acts committed within the scope of the employment or agency.

Scope of Employment: The range of reasonable and foreseeable activities that an employee engages in while carrying out the employer's business.

Set Aside: To annul or vacate a judgment.

Standard of Care: In the law of negligence, the degree of care that a reasonable person should exercise.

Strict Liability: Liability which does not depend on actual negligence or intent to harm, but that is based on the breach of an absolute duty to make something safe. Strict liability most often applies either to ultrahazardous activities or in products liability cases.

Substantive Due Process: The doctrine that the Due Process Clauses of the 5th and 14th Amendments require legislation to be fair and reasonable in content and to further a legitimate governmental objective.

Summary Judgment: A judgment granted on a claim about which there is no genuine issue of material fact and upon which the movant is entitled to prevail as a matter of law.

Tort: A civil wrong for which a remedy may be obtained, usually in the form of damages; a breach of duty that the law imposes on everyone in the same relation to one another as those involved in a given transaction.

Ultra Vires Act: Unauthorized; beyond the scope of power allowed or granted by a corporate charter or by law.

Vacate: To annul or cancel; make void; invalidate.

Waiver: The voluntary relinquishment or abandonment—express or implied—of a legal right or advantage.

Willful and Wanton Misconduct: Conduct committed with an intentional or reckless disregard for the safety of others, as by failing to exercise ordinary care to prevent a known danger or to discover a danger.

Additional Cases of Interest

Instruction and Teaching Methodology

Dibortolo v. Metropolitan School District of Washington Township, 440 N.E. 2d 506 (Improper instruction—Vertical jump test)

Weiss v. Collinsville Community School District No. 10, 456 N.E. 2d 614 (Improper instruction—Failure to instruct about sliding in softball)

Berg v. Merricks, 318 A. 2d 220 (Teaching methodology—Back pullover on trampoline)

Baird v. Hosmer, 347 N.E. 2d 533 (Improper instruction, inappropriate vaulting equipment, and lack of landing mats)

Lovitt v. Concord School District, 228 N.W. 2d 479 (Strenuous workout leads to heat prostration)

Montague v. School Board of the Thornton Fractional Township North High School District, 373 N.E. 2d 719 (Improper methodology—Use of the spotters in gymnastics)

Vargo v. Svitchan, 301 N.W. 2d 1 (Preseason weight lifting for football—Coercion)

Cherney v. Board of Education of the School District of the City of White Plains, 297 N.Y.S. 2d 668 (Improper instruction—Student expressed apprehension about activity)

Buckvar v. Syosset Central School District, 538 N.Y.S. 2d 563 (Lack of safety precautions—Flag football)

Brown v. Quaker Valley School District, 486 A. 2d 526 (Improper instruction—Failure to warn of risk in gymnastics)

District School Board of Lake County v. Talmadge, 381 So. 2d 698 (Improper instruction—Coercion to perform on trampoline)

Supervision

Ragnone v. Portland School District 1J, 633 P. 2d 1287 (Improper supervision—Teacher absent from class)

Holsapple v. Casey Community Unit School District C-1, 510 N.E. 2d 499 (Supervision of locker room and lack of spring-loaded or pneumatic device on door)

Laneheart v. Orleans Parish School Board, 524 So. 2d 138 (Supervision of playground before school)

Leger v. Stockton Unified School District, 249 Cal. Rptr. 688 (Lack of supervision—Wrestler assaulted while dressing in unsupervised restroom)

Cook v. School District UH3J, 731 P. 2d 443 (Lack of supervision at high school basketball game)

Ward v. Newfield Central School District No. 1, 412 N.Y.S. 2d 57 (Inadequate supervision—Failure to enforce safety rules)

Hyman v. Green, 403 N.W. 2d 597 (Ministerial duty—Supervision of flag football)

Chilton v. Cook County School District No. 207, 347 N.E. 2d 705 (Inadequate supervision—Trampoline)

Grant v. Lake Oswego School District No. 7, 515 P. 2d 947 (Inadequate supervision—Springboard)

Poelker v. Warrensburg Latham Unit School District No. 11, 631 N.E. 2d 718 (Lack of adequate supervision of discus throw during track meet)

Merkley v. Palmyra-Macedon Central School District, 515 N.Y.S. 2d 932 (Supervision—Shot put)

Weber v. Yeo, 383 N.W. 2d 230 (Improper supervision—Swimming class)

Barrera v. Dade County School Board, 366 So. 2d 531 (Adequate supervision in gymnastics class employing stations)

Cepelina v. South Milwaukee School Board, 243 N.W. 2d 183 (Negligent supervision [school district] and failure to maintain proper lookout [student]—Student hit by softball bat)

Kennedy v. Rockville Centre Union Free School District, 587 N.Y.S. 442 (More than one ball in play during baseball warm-up—Improper supervision of warm-up)

Edelson v. Uniondale Union Free School District, 631 N.Y.S. 2d 391 (Wrestler moved up a weight class)

Kluka v. Livingston Parish School Board, 433 So. 2d 302 (Coach wrestling athlete)

Aronson v. Horace Mann-Barnard School, 637 N.Y.S. 2d 410 (Instruction and supervision—Shallow dive from racing blocks)

Hauser v. South Orangetown Central School District No. 1, 376 N.Y.S. 2d 608 (Keeping activity within the ability of students)

Harrison v. Montgomery County Board of Education, 456 A. 2d 894 (Inadequate supervision—Excessive number of students in gym due to inclement weather)

Hopwood v. Elmwood Community High School District, 525 N.E. 2d 247 (Physical limitations on activity)

Swiderski v. Board of Education - City School District of Albany, 408 N.Y.S. 2d 744 (Precluding participation in athletics due to defective vision in one eye)

Stephens v. Shelbyville Central Schools, 318 N.E. 2d 590 (Prior physical condition of student)

Sitomer v. Half Hollow Hills Central School District, 520 N.Y.S. 2d 37 (Lack of physical maturity required for athletic program)

Thomas v. Cascade Union High School District No. 5, 724 P. 2d 330 (Physical educator dismissed for kicking student)

Hogenson v. Williams, 542 S.W. 2d 456 (Physical abuse—Football coach strikes player's helmet and pulls on face mask)

Frank v. Orleans Parish School Board, 195 So. 2d 451 (Supervision—Excessive force in discipline)

Rollins v. Concordia Parish School Board, 465 So. 2d 213 (Not attending to a dangerous situation)

James v. Cloversville Enlarged School District, 548 N.Y.S. 2d 87 (Supervision—Ignoring previous complaints of harassment)

Kingsley v. Independent School District No. 2, 251 N.W. 2d 634 (Improper supervision—Failure to take corrective measures in maintaining school discipline)

Hanley v. Hornbeck, 512 N.Y.S. 2d 262 (Supervision—Fight in class)

Oswald v. Township High School District, 406 N.E. 2d 157 (Player suing player as well as school district [basketball])

Azzano v. Catholic Bishop of Chicago, 710 N.E. 2d 117 (School adds student as third party defendant for injuries received in recess game of "Killerball")

Clark V. Furch, 567 S.W. 2d 457 (Supervision—Free time on playground)

Sheehan v. St. Peter's Catholic School, 188 N.W. 2d 868 (Improper supervision—Teacher absent from playground)

Barrett v. Phillips, 233 S.E. 2d 918 (Violation of state high school athletic association rules regarding ages and eligibility)

Best v. Houtz, 541 So. 2d 8 (Supervision—Water on gym floor)

Equipment, Grounds, and Facilities

Thomas v. Chicago Board of Education, 395 N.E. 2d 538 (Coach fails to inspect football equipment)

Gerrity v. Beatty, 373 N.E. 2d 1323 (Poorly fitted football helmet)

Everet v. Bucky Warren, Inc., 380 N.E. 2d 653 (Equipment—School supplies unsafe helmet to hockey player)

Hornyak v. Pomfret School, 783 F. 2d 284 (Harvard Step Test—Bench on uneven ground)

Bowers v. DuPage County Regional Board of School Trustees District No. 4, 539 N.E. 2d 246 (Willful and wanton misconduct—Improper supervision and equipment [rope ladder])

Bouillon v. Harry Gill Company and Litchfield Public School District No. 12, 301 N.E. 2d 627 (Equipment—Pole vault standards)

Siau v. Rapides Parish School Board, 264 So. 2d 372 (Student impaled by javelin left sticking in ground)

Fuehrer v. Board of Education of the Westerville City School District 574 N.E. 2d 448 (Soccer goal falls on student)

Truelove v. Wilson, 285 S.E. 2d 556 (Metal goalpost falls and kills student)

Ambrose v. Buhl Joint School District No. 412, 887 P. 2d 1088 (Attractive Nuisance—Unsecured baseball backstop)

Stanley v. Board of Education of City of Chicago, 293 N.E. 2d 417 (Unsafe equipment—Untaped bat)

Singer v. School District of Philadelphia, 513 A. 2d 1108 (Mats around vaulting horse—Real property exception to governmental immunity)

McCloskey v. Abington School District, 539 A. 2d 946 (Real estate exception to governmental immunity—Fall from gymnastics rings)

Fallon v. Indian Trail School, 500 N.E. 2d 101 (Ultrahazardous activity—Trampoline)

Moschella v. Archdiocese of New York, 383 N.Y.S. 2d 49 (Failure to supply softball face mask)

Rutter v. Northeastern Beaver County School District, 437 A. 2d 1198 ("Jungle Football" during summer practice—No protective gear)

Locilento v. John A. Coleman Catholic High School, 523 N.Y.S. 2d 198 (Lack of protective equipment and implied assumption of risk—Intramural tackle football)

Lynch v. Board of Education of Collinsville Community Unit District No. 10, 412 N.E. 2d 447 (Lack of protective equipment—Powder-puff football)

Montag v. Board of Education, School District No. 40, 446 N.E. 2d 299 (Improper supervision and inadequate safety equipment—Still rings during team practice)

Tieman v. Independent School District No. 740, 331 N.W. 2d 250 (Equipment—Pommels removed from gymnastic horse)

Koch v. City of Avon Board of Education, 580 N.E. 2d 809 (Failure to repair worn Rheuther board)

Ausmus v. Board of Education, City of Chicago, 508 N.E. 2d 298 (Failure to provide safe equipment—Too large of a bat and lack of catcher's gear)

Woodson v. North Chicago Community School District No. 64, 543 N.E. 2d 290 (Inappropriate equipment—Hurdle in physical education class)

Santee v. Orleans Parish School Board, 430 So. 2d 254 (Equipment dangerous when not used for intended purpose)

Gibbons v. Orleans Parish School Board, 391 So. 2d 976 (Attractive nuisance—Inadequate supervision)

Fusilier v. Northbrook Excess and Surplus Insurance Company, 471 So. 2d 761 (Dangerous grounds—Broken chain-link fence in tall, uncut grass)

Dukes v. Bethlehem Central School District, 629 N.Y.S. 2d 97 (Inadequate preparation of long jump pit)

Cestari v. School District of Cheltenham Township, 520 A. 2d 110 (Inadequate equipment—Pole vault pit)

Ardoin v. Evangeline Parish School Board, 376 So. 2d 372 (Maintenance of grounds—Concrete slab in playing area)

Scrapchansky v. Town of Plainfield, 627 A. 2d 1329 (Collision with wall during baseball game)

Overcash v. Statesville City Board of Education, 348 S.E. 2d 524 (Spike embedded in ground along first base line)

Yarber v. Oakland Unified School District, 6 Cal.Rptr. 2d. 437 (Collision with wall during basketball game—Inherent risk)

Gump v. Chartiers - Houston School District, 558 A. 2d 589 (Defective facility—Lack of safety glass)

Thomas v. St. Mary's Roman Catholic Church, 283 N.W. 2d 254 (Facilities—Glass panels adjacent to gym entryway)

Clary v. Alexander Board of Education, 212 S.E. 2d 160 (Facilities—Glass panel close to court boundary)

Prest v. Sparta Community Unit School District, 510 N.E. 2d 595 (Dangerous facilities—Unprotected concrete riser in gym)

Lejeune v. Acadia Parish School Board, 517 So. 2d 1030 (Dangerous grounds—Cable barrier between parking lot and playing field)

Sears v. City of Springhill, 303 So. 2d 602 (Unsafe grounds—Open ditch on school grounds)

Driscol v. Delphi Community School Corporation, 290 N.E. 2d 769 (Inadequate locker room facilities)

Tijerina v. Evans, 501 N.E. 2d 995 (Willful and wanton misconduct—Indoor whiffleball game and open bleachers)

Bauder v. Delavan-Darien School District, 558 N.W. 2d 881 (Decision to play soccer inside gym—Discretionary act covered by immunity)

Brown v. Webster Parish School Board, 716 So. 2d 16 (Member of chain crew strikes head on player's bench after being run into by player)

Dunne v. Orleans Parish School Board, 63 So. 2d 1267 (Facilities—Gym unlocked when not in use)

Seiferth v. Downingtown Area School District, 604 A. 2d 757 (Hole on lacrosse field)

Snyder v. Morristown Central School District, 563 N.Y.S. 2d 258 (Playing on wet, muddy field)

Brock v. Rockridge Community Unit School District 300, 539 N.E. 2d 445 (Dangerous grounds—Uneven surface of playing field)

Zawadzki v. Taylor, 246 N.W. 2d 161 (Lack of safety net or other safety devise between tennis courts)

McInnis v. Town of Tewksbury, 473 N.E. 2d 1160 (Unsafe grounds—Inadequate sand in long jump pit)

Meyer v. School District of Colby, 595 N.W. 2d 339 (Spectator at JV football game injured in fall from bleachers—Spectator not a recreational user)

Administration of First Aid

Bernesak v. Catholic Bishop of Chicago, 409 N.E. 2d 287 (Willful and wanton misconduct—Improper care of injured and allowing dangerous game to be played)

Schultz v. Foster-Glocester Regional School District, 755 A. 2d 153 (Cheerleading—Improper instruction, supervision, and first aid)

Transportation

Hoover v. Charlotte - Mecklenburg Board of Education, 361 S.E. 2d 93 (Inspection and maintenance of school bus)

Notes

1. Neil J. Dougherty, David Auxter, Alan S. Goldberg, and Gregg S. Heinzmann, *Sport, Physical Activity and the Law* (Champaign, Illinois: Human Kinetics, 1994), 235.

2. Neil J. Dougherty, *Principles of Safety in Physical Education and Sport, Third Edition* (Reston, Virginia: National Association for Sport and Physical Education, 2002), 2.

3. Marshall S. Shapo, *Basic Principles of Tort Law* (St. Paul: West, 1999), 2.

4. Dan B. Dobbs, *The Law of Torts* (St. Paul: West, 2001), 12.

5. W. Page Keeton and Robert F. Keeton, *Torts: Cases and Materials*, 2nd ed. (St. Paul: West, 1977), 2.

6. Dobbs, 2.

7. Betty van der Smissen, *Legal Liability and Risk Management for Public and Private Entities, Vol. I* (Cincinnati: Anderson, 1990), chapter 1, 67.

8. Dobbs, 269.

9. Joseph W. Glannon, *The Law of Torts*, 2nd ed. (Gaithersburg, Maryland: Aspen, 2000), 63.

10. van der Smissen, chapter 2, 3.

11. Dobbs, 277.

12. William L. Prosser and W. Page Keeton, *Law of Torts*, 5th ed. (St. Paul: West, 1984), 174.

13. Dobbs, 290.

14. John L. Diamond, Lawrence C. Levine, and M. Stuart Madden, *Understanding Torts* (New York: Matthew Bender, 1996), 64.

15. Glannon, 199.

16. Clarence Morris and Robert C. Morris Jr., *Morris on Torts* (Mineola, New York: Foundation Press, 1980), 57.

17. Joseph W. Little and Lyrissa Barnett Lidsky, *Torts: The Civil Reparation for Harm Done by Wrongful Act* (New York: Matthew Bender, 1997), 207.

18. Dominik Vetri, *Tort Law and Practice* (New York: Matthew Bender, 1998), 17.

19. Vetri, 65.

20. Dobbs, 409.

21. Diamond, Levine, and Madden, 203.

22. van der Smissen, chapter 2, 60.

23. van der Smissen, chapter 3, 78.

24. Glannon, 395.

25. van der Smissen, chapter 3, 108.

26. Victor E. Schwartz, Kathryn Kelly, and David F. Partlett, *Prosser, Wade and Swartz's Torts: Cases and Materials* (New York: Foundation Press, 2000), 639.

27. Wesley H. Winborne, ed., *Civil Actions Against State Government* (Colorado Springs: Shepard's/McGraw-Hill, 1982), 20.

28. Dobbs, 717.

29. Dobbs, 620.

30. American Law Institute, *Restatement of Torts* (Philadelphia, 1972), s 463.

31. Prosser and Keeton, 451.

32. Edward J. Kionka, *Torts in a Nutshell*, 3rd ed. (St. Paul: West, 1999), 123.

33. van der Smissen, chapter 5, 235.

34. Dobbs, 494.

35. Schwartz, Kelly, and Partlett, 598.

36. Schwartz, Kelly, and Partlett, 592.

37. William P. Statsky, *Torts: Personal Injury Litigation* (St. Paul: West, 1982), 400.

38. Dobbs, 539.

39. Diamond, Levine, and Madden, 256.

40. Schwartz, Kelly, and Partlett, 599.

41. Dougherty, Auxter, Goldberg, and Heinzmann, 255.

42. Prosser and Keeton, 398.

43. Conn, J.H., Tompkins, R.N. and Hunter T. (1993). *Hazing Activities In Missouri Interscholastic Athletic Programs. Journal of Legal Aspects of Sport,* 3(2), 35-43.

References

Books

American Law Institute. (1979). *Restatement of the law, 2d—torts*. Philadelphia: American Law Institute.

American Law Institute. (1998). *Restatement of the law—torts: Apportionment of liability*. Philadelphia: American Law Institute.

Appenzeller, Herb. (1975). *Athletics and the law*. Charlottesville, VA: Michie.

Appenzeller, Herb. (1978). *Physical education and the law*. Charlottesville, VA: Michie.

Appenzeller, Herb. (1983). *The right to participate*. Charlottesville, VA: Michie.

Appenzeller, Herb, & Thomas Appenzeller. (1980). *Sports and the courts*. Charlottesville, VA: Michie.

Appenzeller, Herb, et al. (1984). *Sports and law*. St. Paul: West.

Arnold, Don E. (1983). *Legal considerations in the administration of public school physical education and athletic programs*. Springfield: Thomas.

Baley, James A., & David L. Matthews. (1984). *Law and liability in athletics, physical education, and recreation*. Boston: Allyn and Bacon.

Black, Henry Campbell. (1999). *Black's Law Dictionary* (7th ed.). St. Paul: West.

Clement, Annie. (1988). *Law in sport and physical activity*. Indianapolis: Benchmark.

Dobbs, Dan B. (2001). *The law of torts*. St. Paul: West.

Dougherty, Neil J. (Ed.). (2002). *Principles of safety in physical education and sport, third edition*. Reston, VA: National Association for Sport and Physical Education.

Dougherty, Neil J., David Auxter, Alan S. Goldberg, & Gregg S. Heinzman. (1994). *Sport, physical activity and the law*. Champaign, IL: Human Kinetics.

Diamond, John L., Lawrence C. Levine, & M. Stuart Madden. (1996). *Understanding torts*. New York: Matthew Bender Inc.

Drowatsky, John N. (1984). *Legal issues in sport and physical education management*. Champaign, IL: Stripes.

Glannon, Joseph W. (2000). *The law of torts* (2nd ed.). Gaithersburg, MD: Aspen.

Jefferies, Stephen C. (1985). *Sport law study guide*. Champaign, IL: Human Kinetics.

Keeton, Page, & Robert F. Keeton. (1971). *Torts: Cases and materials*. St. Paul: West.

Keeton, W. Page, Dan B. Dobbs, Robert F. Keeton, & David G. Owen. (1984). *Prosser and Keeton on Torts*. St. Paul: West.

Kionka, Edward J. (1999). *Torts in a nutshell* (3rd ed.). St. Paul: West.

LaMorte, Michael W. (1982). *School law: Cases and concepts*. Englewood Cliffs: Prentice.

Little, Joseph W., & Lyrissa Barnett Lidsky. (1997). *Torts: The civil law of reparation for harm done by wrongful act*. New York: Matthew Bender, Inc.

Masteralexis, Lisa Pike, Carol A. Barr, & Mary A. Hums. (1998). *Principles and practice of sport management*. Gaithersburg, MD: Aspen.

Morris, Clarence, & C. Robert Morris, Jr. (1980). *Morris on torts*. Mineola, NY: Foundation Press.

National Association for Sport and Physical Education (NASPE). (1987). *Current issues in sport law*. Reston, VA: American Alliance for Health, Physical Education, Recreation and Dance.

National Organization on Legal Problems of Education (NOLPE). 1973 to present (an annual publication). *The yearbook of school law*. Topeka, KS: Author.

Nygaard, Gary. (1989). *Law for physical educators and coaches.* Columbus, OH: Horizons.

Nygaard, Gary, & Thomas H. Boone. (1985). *Coaches guide to sport law.* Champaign, IL: Human Kinetics.

Oregon Department of Education. (1988). *Legal liability in the gymnasium.* Salem, OR: Author.

Prosser, William L., & W. Page Keeton. (1984). *Law of torts* (5th ed.). St. Paul: West.

Riffer, Jeffery K. (1985). *Sports and recreational injuries.* Colorado Springs: Shepard's McGraw-Hill.

Schwartz, Victor E., Kathryn Kelly, & David F. Partlett. (2000). *Prosser, Wade and Schwartz's torts: Cases and materials.* New York: Foundation Press.

Shapo, Marshall S. (1999). *Basic principles of tort law.* St. Paul: West.

Statsky, William P. (1982). *Torts: Personal injury litigation.* St. Paul: West.

van der Smissen, Betty. (1990). *Legal liability and risk management for public and private entities* (Vols. 1-3). Cincinnati: Anderson.

Vetri, Dominick. (1998). *Tort law and practice.* New York: Matthew Bender Inc.

Periodicals

Journal of Legal Aspects of Sport. Society for the Study of Legal Aspects of Sport and Physical Activity, Indiana State University (semi-annually).

Journal of Physical Education, Recreation and Dance. American Alliance of Health, Physical Education, Recreation and Dance. Reston, VA (nine issues per year).

Strategies (Courtside Column). American Alliance of Health, Physical Education, Recreation and Dance. Reston, VA (six issues per year).

Law-Related Newsletters

Sports and the Courts. Dallas, Texas (5 issues per year).

Legal References

American Jurisprudence. Rochester: Lawyer's Cooperative, 1943 - date.

American Law Reports Annotated. Rochester: Lawyer's Cooperative, 1913 - date.

Atlantic Reporter. St. Paul: West, 1885 - date.

Black, Henry Campbell. *Black's Law Dictionary* (7th ed.). St. Paul: West, 1999.

California Reporter. St. Paul: West, 1959 - to date.

Corpus Juris Secundum. New York: American Law Book, 1952 - date.

Eighth Decennial Digest. St. Paul: West, 1978.

Federal Reporter. St. Paul: West, 1880 - date.

New York Supplement. St. Paul: West, 1888 - date

Ninth Decennial Digest, Part 1. St. Paul: West, 1983.

Ninth Decennial Digest, Part 2. St. Paul: West, 1988.

North Eastern Reporter. St. Paul: West, 1885 - date.

North Western Reporter. St. Paul: West, 1879 - date.

Pacific Reporter. St. Paul: West, 1887 - date.

Shepard's Citations. Colorado Springs: Shepard's/McGraw-Hill, to date.

South Western Reporter. St. Paul: West, 1886 - date.

Southern Reporter. St. Paul: West, 1886 - date.

Tenth Decennial Digest, Part 1. St. Paul: West, 1993.

Tenth Decennnial Digest, Part 2. St. Paul: West, 1998.

West's General Digest. 9th Series. St. Paul: West, 1996-2000.

West's General Digest. 10th Series. St. Paul: West, 2001.

National Association for Sport and Physical Education
an association of the American Alliance for Health, Physical Education, Recreation and Dance

1900 Association Drive
Reston, VA 20191
(703) 476-3410
www.aahperd.org/naspe

BEST COPY AVAILABLE

ISBN 0-88314-737-8

274

U.S. Department of Education
Office of Educational Research and Improvement (OERI)
National Library of Education (NLE)
Educational Resources Information Center (ERIC)

NOTICE

Reproduction Basis

[X] This document is covered by a signed "Reproduction Release (Blanket)" form (on file within the ERIC system), encompassing all or classes of documents from its source organization and, therefore, does not require a "Specific Document" Release form.

[ ] This document is Federally-funded, or carries its own permission to reproduce, or is otherwise in the public domain and, therefore, may be reproduced by ERIC without a signed Reproduction Release form (either "Specific Document" or "Blanket").